Official Gazette

REPUBLIC OF THE PHILIPPINES

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MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 40–A

INSTITUTING THE GOLDEN HEART PRESIDENTIAL AWARD

There being an urgent necessity of giving official recognition to Filipino citizens and to resident foreigners and other friends of the Filipino people who have rendered distinguished services or given noteworthy monetary or other material aid and encouragement to the campaign for the amelioration and improvement of the social, economic and moral conditions of the masses, I, Ramon Magsaysay, President of the Philippines, pursuant to the powers vested in me by law, do hereby institute a special Presidential Award to be known as the Golden Heart Presidential Award.

SECTION 1. The Golden Heart Presidential Award shall be presented to any individual, organization or entity, either here or abroad, that has rendered meritorious and distinguished services or contributed noteworthy monetary or other material aid and encouragement to the campaign of the government for the amelioration and improvement of the moral, social and economic conditions of the masses of our people, especially in the rural areas.

SEC. 2. The Golden Heart Medal shall have on its obverse two outstretched hands offering to the people a golden heart, and below, the motto and theme of the award, MANUM TUAM APERVIT INOPE, a brief four-word Latin interpretation of Proverbs 31:20—"She hath opened her heart to the needy and stretched forth her hands to the poor." Surrounding the design is the legend: THE GOLDEN HEART PRESIDENTIAL AWARD. The reverse of the medal shall bear the Presidential Seal surrounded by a plain border on which the name of the recipient may be engraved.

SEC. 3. In the case of individual awards, the medal and ribbon will be presented, and in the case of organizations or entities a simple narra plaque on which the obverse and reverse of the medal will be placed. The medal should be of bronze gilded and of little intrinsic

value but it should be something which will be valued and honored heirloom for the recipients to hand down to their successors.

SEC. 4. The award will not be limited to those giving large financial or other material contributions, as there are smaller aids which may represent comparatively equal or even greater sacrifices on the part of the donor. Until the Congress sets aside an appropriation for this award, the same shall be paid for from the discretionary funds of the President of the Philippines.

Done in the City of Manila, this 21st day of June, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 60

DESIGNATING THE BOARD OF LIQUIDATORS CREATED UNDER EXECUTIVE ORDER NO. 372, DATED NOVEMBER 24, 1950, TO LIQUIDATE THE ASSETS AND LIABILITIES OF THE LAND SETTLEMENT AND DEVELOPMENT CORPORATION (LASEDECO), ABOLISHED UNDER REPUBLIC ACT NO. 1160

Pursuant to the powers vested in me by section 15 of Republic Act No. 1160, I, Ramon Magsaysay, President of the Philippines, do hereby order:

SECTION 1. The assets and liabilities of the Land Settlement and Development Corporation, otherwise known as LASEDECO, abolished by Republic Act No. 1160, shall be liquidated by the Board of Liquidators created under Executive Order No. 372, dated November 24, in accordance with the provisions of sections 10 and 15 of said Act.

SEC. 2. The National Resettlement and Rehabilitation Administration (NARRA) is hereby directed to determine within sixty days from the date hereof which properties, equipment, assets and rights of LASEDECO are needed by it in carrying out the purposes and objectives of Republic Act No. 1160 and to submit to the Board of Liquidators an inventory thereof. The Board of Liquidators shall,

with the approval of the President of the Philippines, effect the transfer to NARRA of title to said properties, equipment, assets and rights, subject to the provisions of section 10 of Republic Act No. 1160.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 61

AMENDING ANNEX "A" TO EXECUTIVE ORDER NO. 453 DATED JUNE 19, 1951, ENTITLED "ESTABLISHING RULES AND REGULATIONS TO CONTROL, CURTAIL, REGULATE AND/OR PROHIBIT THE EXPORTATION OR RE-EXPORTATION OF CERTAIN ITEMS FROM THE PHILIPPINES, TO IMPLEMENT REPUBLIC ACT NO. 613"

Pursuant to the powers vested in me by section 3 of Republic Act No. 613, as reenacted by Republic Act No. 824, I, Ramon Magsaysay, President of the Philippines, do hereby further amend Annex "A" III, B, to Executive Order No. 453 dated June 19, 1951, as amended by Executive Order No. 482 dated October 31, 1951, and revived by Executive Order No. 526 dated August 20, 1952, by adding the following item:

"7. Rice bran"

Done in the City of Manlia, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 62

FURTHER AMENDING SECTION 5–*c* OF EXECUTIVE ORDER NO. 601 DATED JUNE 26, 1953, ENTITLED "PRESCRIBING RULES AND REGULATIONS FOR THE APPOINTMENT OF RESERVE OFFICERS IN THE REGULAR FORCE, ARMED FORCES OF THE PHILIPPINES", AS AMENDED BY EXECUTIVE ORDER NO. 644, DATED NOVEMBER 21, 1953

Section 5–c of Executive Order No. 601, dated June 26, 1953, as amended by Executive Order No. 644, dated November 21, 1953, is hereby further amended by including a new sub-paragraph, numbered (5), reading as follows:

"(5) Those who do not qualify under any of the categories mentioned in sub-paragraphs (1) to (4) above but who have at least four years of active commissioned service on July 1st prior to the period (as specified in section 2 of this Order) in which they are appointed shall be placed at the bottom of the promotion list for Lieutenants Junior Grade in effect on the date of their appointment."

Done in the City of Manila, this 6th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 63

ORGANIZING A CERTAIN PORTION OF THE MUNICIPALITY OF KIDAPAWAN, PROVINCE OF COTABATO, INTO AN INDEPENDENT MUNICIPALITY UNDER THE NAME OF MAKILALA

Upon the recommendation of the Provincial Board of Cotabato and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, there is hereby

created in the Province of Cotabato a municipality to be known as the Municipality of Makilala, which shall consist of that portion of the municipality of Kidapawan which is separated from the said municipality by the following boundary line:

From M. B. M. No. 3 on the Kidapawan-M'lang boundary line which is also on the Saguing River following the course of said river upstream to its source somewhere on Mount Apo until it touches the Cotabato-Davao boundary line.

The municipality of Makilala contains the following barrios: Lamitan which shall be the seat of the municipal government, San Vicente, Santa Catalina, Malasila, Indangan, Bulacanon, Mala-ang, Libertud, Saguing, Luna, Bulatucan, Kisante, Garsica, and Junction.

The municipality of Kidapawan shall have its present territory minus the portion thereof included in the municipality of Makilala.

The municipality of Makilala shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof, and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the mother municipality of Kidapawan, after the segregation therefrom of the barrios comprised in the municipality of Makilala, can still maintain creditably its municipal government, meet all contractual and statutory obligations, and provide for essential municipal services.

Done in the City of Manila, this 8th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 64

TERMINATING THE COLLECTION OF TOLLS AT THE DAET TOLL BRIDGE, PROVINCE OF CAMARINES NORTE

The total cost of the Daet Toll Bridge in the Province of Camarines Norte, plus interest at the rate of 5 per cent per annum, having been fully recovered, as certified in accordance with the provisions of Act No. 3500, as amended, it is hereby ordered that the collection of tolls at the Daet Toll Bridge be terminated.

This Order shall take effect upon receipt of copy hereof by the Provincial Treasurer of Camarines Norte.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 65

CREATING THE MUNICIPALITY OF MONKAYO IN THE PROVINCE OF DAVAO

Upon the recommendation of the Provincial Board of Davao and pursuant to the provisions of section 68 of the Revised Administrative Code, there is hereby created in the province of Davao a municipality to be known as the Municipality of Monkayo, which shall consist of that portion of the municipality of Compostela which is separated from said municipality by the following boundary line:

From M.B.M. No. 6 on the Saug–Compostela boundary line running southeasterly passing through M.B.M. No. 7 near Barrio Bankerohan to M.B.M No. 8 on the junction of the Agusan River and Mapaca River somewhere south of the barrio of Pilan, and thence running northeasterly passing through M.B.M. Nos. 9 and 10 to M.B.M. No. 11 on the summit of Mt. Agtouganon on the Cateel–Compostela boundary line. (Description based on the Compostela Cadastre and map of te proceed municipality of Monkayo, scale 1,250,000, certified true and correct by Angel Sogueco, supervising surveyor, Bureau of Lands.)

The municipality of Monkayo contains the following barrios. Monkayo which shall be the seat of the municipal government, Muñoz, Baylo, Haguimitan, Banglasang, Ca-

mungangan, Mamunga, Babag, Pilan, Libasan, Bankerohan, and Linoan.

The municipality of Compostela shall have its present territory minus the portion thereof included in the municipality of Monkayo.

The municipality of Monkayo shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all statutory obligations and ordinary essential services of a regular municipality and that the mother municipality of Compostela, after the segregation therefrom of the territory comprised in the municipality of Monkayo, can still maintain creditably its municipal government, meet all its statutory and contractual obligations, and provide for essential municipal services.

Done in the City of Manila, this 4th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 66

AMENDING EXECUTIVE ORDER NO. 22, DATED APRIL 5, 1954, ENTITLED "PROHIBITING THE USE OF TRAWLS IN SAN MIGUEL BAY"

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby amend Executive Order No. 22, dated April 5, 1954, so as to allow fishing by means of trawls, as defined in said Executive Order, within that portion of San Miguel Bay north of a straight line drawn from Tacubtacuban Hill in the Municipality of Mercedes, Province of Camarines Norte, to Balocbaloc Point in the Municipality of Tinambac, Province of Camarines Sur. Fishing by means of trawls south of said line shall still be absolutely prohibited.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 67

PROMULGATING RULES AND REGULATIONS COVERING DETAIL OR ASSIGNMENT OF MILITARY PERSONNEL TO CIVILIAN OFFICES AND OFFICIALS

By virtue of the powers vested in me by the Constitution and laws of the Philippines, I, Ramon Magsaysay, President of the Philippines, do hereby promulgate the following rules and regulations covering the detail and/or assignment of military personnel to civilian offices and officials.

1. The following shall be entitled to army, air force, and naval Aides-de-Camp:

a. The President, in such number and of such grades as he may determine;

b. The Secretary of National Defense, in such number and of such grades as he may determine;

c. General or flag officers of the Armed Forces of the Philippines in the active service in any of the armed services in such number and of such grades as the Secretary of National Defense may determine;

d. General or flag officers of the Armed Forces, whether in the active, inactive, or retired status, who may be appointed Philippine diplomatic representatives of the rank of minister or higher, in such number and of such grades as may be prescribed by the Secretary of National Defense for general and flag officers in the active service in any of the armed services.

2. *a.* Military Assistants may be assigned to the Office of the Secretary of National Defense, in such number and of such grades as he may determine;

b. With the approval of the President, Military Assistants may be assigned to the Office of the Vice-President, the Senate President, and the Speaker of the House of Representatives;

c. Military Assistants must be in the active service of the armed forces. They shall receive the pay and allowances of their respective grades and ranks in the armed forces and such additional allowances and per diems as the law and the rules and regulations may allow.

3. Personal Military Assistants may be assigned by the Secretary of National Defense to the Vice-President, the Senate President, the Speaker of the House of Representatives, or any Philippine diplomatic representative of the rank of minister or higher who is not otherwise entitled to an aide-de-camp, subject to the following conditions:

a. Only one Personal Military Assistant may be allowed each of such officials at any one time;

b. The military grade of such military assistant shall not be higher than Captain or Lieutenant Senior Grade;

c. The military assistant shall not collect from the armed forces, during the period of such assignment or detail, any allowances, traveling expenses, or per diems other than the pay and allowances (of his grade, rank and rating) he would be entitled to receive if he were on regular assignment or detail with units of the Armed Forces.

4. The Chief of Staff, Armed Forces of the Philippines, may, by arrangement with the head of any government office, agency or entity, assign to or detail with such office, agency or entity an armed forces (army, air force, or navy) liaison officer.

5. The President, the Secretary of National Defense, or the Chief of Staff of the Armed Forces of the Philippines, may detail armed forces security guards to any civilian government office or official, or to any private entity or person, when such detail would be in the public interest in the opinion of the official ordering the same.

6. In addition to the assignments and details enumerated in paragraph 1 thru 5, the President may, pursuant to law, assign to or detail with any civilian government office commissioned officers of the armed forces.

7. This order does not regulate or in any way apply to the assignment or detail of army, air force, and naval attaches to the Philippine diplomatic mission abroad.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 68

AMENDING THE PROVISO OF THE FIRST PARAGRAPH OF EXECUTIVE ORDER NUMBERED THIRTY-FOUR, DATED MAY 20, 1954, DECLARING THAT PORTION OF THE BENGUET ROAD (KENNON ROAD) FROM KLONDYKE'S SPRING TO CAMP SIX WITHIN THE MOUNTAIN PROVINCE AS TOLL ROAD AND FIXING SCHEDULE OF FEES FOR THE COLLECTION OF TOLLS THEREON

By virtue of the powers vested in me by section one of Act No. 1959, as amended by Acts Nos. 2414 and 3542, I, Ramon Magsaysay, President of the Philippines, do hereby amend the proviso of the first paragraph of Executive Order No. 34, dated May 20, 1954, to read as follows:

> *Provided,* That all motor vehicles of the Manila Railroad Company on the run from Baguio to Manila and return shall pay the regular toll charge as provided above, and that all its other motor vehicles on the run from Baguio to Damortis and to other lowland towns in the provinces immediately surrounding Baguio and return shall be subject to a flat annual payment of ₱10,000 as provided for in the contract of sale of the Benguet Auto Line between the Government of the Philippines and the Manila Railroad Company dated April 2, 1930.

This Order shall take effect immediately.

Done in the City of Manila, this 23rd day of September in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 69

TRANSFERRING THE SEAT OF GOVERNMENT OF THE MUNICIPALITY OF OTEIZA, PROVINCE OF SURIGAO, FROM ITS PRESENT SITE TO THE BARRIO OF MARIHATAG, SAME MUNICIPALITY

Upon the recommendation of the Provincial Board of Surigao and pursuant to the provisions of section 68 of the Revised Administrative Code, the seat of government of the municipality of Oteiza, Province of Surigao, is hereby transferred to the barrio of Marihatag, same municipality.

This Order shall take effect immediately.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 59

REVOKING PROCLAMATION NO. 132, DATED JUNE 17, 1949, AND DECLARING SO MUCH OF THE REMAINING PARCEL OR PARCELS OF LAND EMBRACED THEREIN AS HAVE NOT YET BEEN SOLD, SITUATED IN PARANG, COTABATO, OPEN TO DISPOSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 730 IN RELATION TO CHAPTER IX OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of sections 72 and 88 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 132 dated June 17, 1949, and declare so much of the remaining parcel or parcels of land embraced therein as have not yet been sold, situated in the municipality of Parang, Cotabato, open to disposition under the provisions of Republic Act No. 730 in relation to Chapter IX of the Public Land Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 60

AUTHORIZING THE GIRL SCOUTS OF THE PHILIPPINES TO CONDUCT A NATIONAL FUND DRIVE DURING THE PERIOD FROM NOVEMBER 15 TO DECEMBER 30, 1954, IN PLACES OUTSIDE OF GREATER MANILA

WHEREAS, the Girl Scouts of the Philippines, through its untiring efforts and effective leadership during the last fourteen years, has contributed immensely to the character development and citizenship training of the Filipino girls;

WHEREAS, this Organization has more than amply demonstrated that it merits the continued moral encouragement and material support of our people and that there is a great need to extend Girl Scouting to thousands of other girls all over the country; and

WHEREAS, the Girl Scouts of the Philippines is in need of funds to carry on its work effectively, to intensify and promote such program activities as will be of great benefit to its members and the communities in which they live, and to meet its obligations and participate actively as a member of the World Association of Girl Guides and Girl Scouts;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the authority vested in me by law, do hereby authorize the Girl Scouts of the Philippines to conduct a national fund drive during the period from November 15 to December 30, 1954, in the province and territories outside of Greater Manila. I call upon all citizens and residents of the Philippines outside Greater Manila to assist wholeheartedly in this campaign and to give their utmost support so that the Girl Scouts of the Philippines may be assured of adequate funds with which to carry on its work. I authorize all the treasurers of provincial, city and municipal government, as well as school officials and teachers, to accept, for the Girl Scouts of the Philippines, fund-raising responsibilities, and urge them to give active support and leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

PROCLAMATION NO. 61

PROCLAIMING THE EXISTENCE OF PUBLIC CALAMITY IN THE PROVINCE OF OCCIDENTAL NEGROS AND THE CITY OF BACOLOD AND DECLARING IN FULL FORCE AND EFFECT THEREIN THE PROVISIONS OF ACT NO. 4164

WHEREAS, it has been found that there is a widespread scarcity of the supply of rice and palay in the Province of Occidental Negros and the City of Bacolod caused by a long nation-wide drought which prevented the farmers in the rice-producing regions of the Philippines to plant the rice-fields in due time;

WHEREAS, this scarcity has brought about an increase in the price of rice and palay and has rendered more difficult the means of livelihood of the people of said province and city;

WHEREAS, the resulting crisis has been aggravated by the hiding, concealing and hoarding of rice and palay by some owners and dealers of said commodities for purposes of profiteering; and

WHEREAS, such a state of things has caused deep concern and fear among the people of said province and city and unless effective measures are immediately taken to cope with the emergency, panic and disorder therein will certainly ensue;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers conferred upon me by Act No. 4164 of the former Philippine Legislature, entitled "An Act to prevent the excessive increase in the prices of certain prime necessities of life on the occasion of a public calamity, penalizing the violation thereof, and for other purposes," do hereby certify and declare that

a public calamity resulting from drought and scarcity of rice and palay exists in the Province of Occidental Negros and City of Bacolod and declare in full force and effect therein the provisions of said Act No. 4164.

The public order in the province and city above-named so requiring, I hereby order the Commander of the Philippine Constabulary of Occidental Negros, or his duly authorized representative, to seize any stock of rice or palay that is hidden, concealed, or hoarded for purposes of profiteering by any owner or dealer thereof when such a stock is in excess of one hundred cavanes.

The stock of rice and palay so seized shall be delivered to the representative of the Price Stabilization Corporation (PRISCO) in Bacolod City to be sold and disposed of to the public in accordance with law and the proceeds of the sale at legal price shall be reimbursed to the respective owners thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 3rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

PROCLAMATION NO. 62

FIXING THE DATE WHEN THE NEW EXEMPTIONS OF CERTAIN ITEMS FROM THE PAYMENT OF THE SPECIAL EXCISE TAX ON FOREIGN EXCHANGE SHALL TAKE EFFECT

WHEREAS, under section 2 of Republic Act No. 601, as amended by Republic Act No. 1175, the special excise tax of 17 per centum assessed on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines, or any of its agents for the payment of the cost, transportation and/or other charges incident to the importation into the Philippines or remittances abroad of the articles, commodi-

ties or items mentioned in section 2 of Republic Act No. 601, as amended by Republic Act No. 1175, shall not be collected;

WHEREAS, section 2 of Republic Act No. 601, as amended by Republic Act No. 1175, has been further amended by section 1 of Republic Act No. 1197, approved August 28, 1954, so as to include new items in the list of exemptions from the payment of the special excise tax on foreign exchange; and

WHEREAS, the new exemptions from the payment of the 17 per centum special excise tax for the items mentioned in the preceding paragraph hereof, shall only take effect, in accordance with section 2 of Republic Act No. 1197, on the date or dates which the President of the Philippines shall fix when in his judgment the interest of the national economy and general welfare so require;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, pursuant to the powers vested in me by section 2 of Republic Act No. 1197, do hereby proclaim that new exemptions from the payment of the 17 per centum especial excise tax on foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines, or any of its agents, for the following items shall take effect on the date of the signing of this proclamation:

(1) Remittances in payment of cattle and cocoa beans;

(2) Remittances by airlines of American registry operating between the Philippines and the United States of income in the Philippines to their head offices in the United States; provided that such airlines have been granted a permit to operate under the Air Transport Agreement between the United States and the Philippines prior to the enactment of Republic Act No. 601;

(3) Remittances for payment of living expenses of students pursuing studies abroad not exceeding the equivalent to $250 per month including payment of tuition, books, medical expenses and other school fees; and

(4) Dollar allocations for one trip a year and not exceeding $300 for each Moro pilgrim traveling abroad under permit of the Government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 3rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 63

DECLARING THE PERIOD FROM SEPTEMBER 26 TO OCTOBER 2, 1954, AS FOREST CONSERVATION WEEK

WHEREAS, our forest resources are to utmost importance to the welfare and economic well-being of our people;

WHEREAS, these forest resources constitute a valuable heritage that must be passed on to those coming after us;

WHEREAS, wanton damage to these resources has been going on through kaiñgin making and destructive logging practices; and

WHEREAS, it has become necessary to stop such destruction and to impress upon our people the need of conserving these resources to the end that the benefits we derive from them and the services they render us would not only remain unimparied but also made available to succeeding generations;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from September 26 to October 2, 1954, as Forest Conservation Week and designate the Department of Agriculture and Natural Resources to take charge of, and coordinate, all activities in celebration of the Week.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 6th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 64

DECLARING THE PERIOD FROM SEPTEMBER 15, 1954, TO SEPTEMBER 15, 1955, AS THE LITERACY YEAR AND CREATING A COMMITTEE TO TAKE CHARGE OF THE NATIONAL CAMPAIGN FOR LITERACY

In order to make the Philippines a completely functionally literate nation, I, Ramon Magsaysay, President of the Philippines, do hereby declare the period from September 15, 1954, to September 15, 1955, as the Literacy Year and create a committee to take charge of the national campaign for literacy. The committee shall be composed of the following:

All Heads of the Executive Departments of the Government	Technical Consultants
Chancellor Segundo Infantado	Co-Chairman
Dean Conrado Benitez	Co-Chairman
The Chief, Adult Education Division, Bureau of Public School	Co-Chairman
Dean Isidoro Panlasigui	Co-Chairman
Mrs. Flora E. Diaz Catapusan	Co-Chairman
Mrs. Geronima T. Pecson	Co-Chairman
All representatives of various institutions and organizations and others interested whose signatures appear on the enclosure of the memorandum of the National Literacy Campaign Delegation	Members

I hereby call upon all government and private offices, public and private schools, professional organizations, cultural, religious, civic and service clubs, the press and the radio to lend their cooperation and assistance in making the national campaign for literacy successful.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

47255——2

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 65

DECLARING TUESDAY, OCTOBER 12, 1954, A SPECIAL PUBLIC HOLIDAY IN THE CITY OF ZAMBOANGA

The twelfth day of October being a significant date in the history of Zamboanga City, I, Ramon Magsaysay, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, do hereby declare Tuesday, October 12, 1954, as a special public holiday in said city.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 66

DECLARING FRIDAY, SEPTEMBER 17, 1954, A SPECIAL PUBLIC HOLIDAY IN THE PROVINCE OF ZAMBOANGA DEL SUR

WHEREAS, the second anniversary of the organization of the Province of Zamboanga del Sur falls on September 17, 1954; and

WHEREAS, the people of said province desire to be afforded full opportunity to celebrate the event with appropriate ceremonies. including an industrial and agricultural fair and athletic games;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby proclaim Friday, September 17, 1954, as a special public holiday in the Province of Zamboanga del Sur.

In WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of September, in the year of Our Lord, ninteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 67

RESERVING FOR MARKET, SCHOOL AND MUNICIPAL SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF PIKIT, PROVINCE OF COTABATO, ISLAND OF MINDANAO

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I, Ramon Magsaysay, President of the Philippines, do hereby withdraw from sale or settlement and reserve for market, school and municipal site purposes as indicated hereunder, subject to private rights, if any there be, under the administration of the Municipality of Pikit, except the school site which is hereby placed under the administration of the Director of Public Schools, certain parcels of the public domain situated in the Municipality of Pikit, Province of Cotabato, Island of Mindanao, and more particularly described, to wit:

Lot 1, Mr–1042 (Municipal Site)

A parcel of land (lot 1 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the E., by proposed road; on the S., by proposed road; on the

W., by lot 6 of plan Mr–1042; and on the NW., by creek. Beginning at a point marked 1 on plan, being S. 38° 47′ W., 801.12 meters from triangulation station Pikit (1930), thence N. 1° 44′ E., 76.00 meters to point 2; thence N. 39° 41′ E., 64.33 meters to point 3; thence N. 35° 02′ E., 37.26 meters to point 4; thence S. 0° 39′ W., 156.00 meters to point 5; thence West, 62.99 meters to the point of beginning; containing an area of 7,097 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/27 cylindrical concrete monument; point 2, by Mr–1042/31 cylindrical concrete monument; point 3, by stake; point 4, by Mr–1042/3 cylindrical concrete monument, and point 5, by Mr–1042/90 cylindrical concrete monument; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 2, Mr–1042 (Municipal Site)

A parcel of land (lot 2 asshown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the N., by Paidu Pulangi road; on the NE., by proposed road; on the SE., by proposed road and creek; on the S., by lot 5 of plan Mr–1042; and on the W., by lots 5 and 3 of plan Mr–1042. Beginning at a point marked 1 on plan, being S. 54° 42′ W., 605.73 meter from Pikit triangulation station (1930), thence west, 127.64 meters to point 2; thence N. 1° 46′ E., 40.00 meters to point 3; thence east, 191.16 meters to point 4; thence S. 30° 06′ E., 75.50 meters to point 5; thence S. 43° 21′ W., 26.06 meters to point 6; thence S. 34° 44′ W., 55.16 meters to point 7; thence S. 33° 13′ W., 61.53 meters to point 8; thence S. 33° 56′ W., 42.72 meters to point 9; thence N. 1° 27′ E., 175.59 meters to the point of beginning; containing an area of 18,015 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/13 cylindrical concrete monument; point 2, by Mr–1042/6 cylindrical concrete monument; point 3, by Mr–1042/4 cylindrical concrete monument; point 4, by Mr–1042/9 cylindrical concrete monument; point 5, by Mr–1042/20 cylindrical concrete monument; points 6, 8 and 9, by stakes; and point 7, by Mr–1042/14 cylindrical concrete monument; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 3, Mr–1042—(Municipal site)

A parcel of land (lot 3 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the N., by Paidu Pulangi road; on the E., by lot 2 of Plan Mr–1042; on the S., by lot 4 of plan Mr–1042; and on the W., by Cligli road. Beginning at a point marked 1 on plan, being S. 63° 18′ W., 777.04 meters from Pikit triangulation station (1930), thence N. 1° 46′ E., 40.00 meters to point 2 thence east, 72.00 meters to point 3; thence S. 1° 46′ W., 40.00 meters to point 4; thence west, 72.00 meters to the point of beginning; containing an area of 2,879 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/10 cylindrical concrete monument; point 2, by Mr–1042/22 cylindrical concrete monument; point 3, by Mr–1042/4 cylindrical concrete monument; and point 4, by Mr–1042/6 cylindrical concrete monument; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 5, Mr–1042 (School Site)

A parcel of land (lot 5 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the N., by lots 4 and 2 of plan Mr–1042; on the E., by lot 2 of plan Mr–1042; on the SE., by creek; on the S., by proposed road; and on the W., by Cligli road and lot 4 of plan Mr–1042. Beginning at a point marked 1 on plan, being S. 54° 42′ W., 605.73 meters from Pikit triangulation station (1930), thence N. 1° 27′ W., 175.59 meters to point 2; thence S. 54° 06′ W., 27.13 meters to point 3; thence S. 53° 39′ W., 39.21 meters to point 4; thence S. 53° 23′ W., 102.12 meters to point 5; thence N. 89° 03′ W., 66.48 meters to point 6; thence N. 0° 47′ E., 110.30 meters to point 7; thence S. 89° 45′ E., 74.82 meters to point 8; thence N. 0° 47′ E., 165.54 meters to point 9; thence east, 127.84 meters to the point of beginning; containing an area of 36,461 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/13 cylindrical concrete monument; points 2, 3 and 4, by stakes; point 5, by Mr–1042/16 cylindrical concrete monument; point 6, by Mr–1042 cylindrical concrete monument; point 7, by Mr–1042/5 cylindrical concrete monument; point 8, by Mr–1042/12 cylindrical concrete monument; and point 9, by Mr–1042/6 cylindrical concrete monument; bearings true; declination 1° 23′ E.; date of survey, July 7–9, and August 14, 1943 and that of the approval, July 8, 1954.

Lot 6, Mr–1042 (School Site)

A parcel of land (lot 6 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the E., by lot 1 of plan Mr–1042; on the S., by proposed road; and on the NW., by creek. Beginning at a point marked 1 on plan, being S. 38° 47′ W., 801.12 meters from Pikit triangulation station (1930), thence west, 94.01 meters to point 2; thence N. 48° 00′ E., 66.81 meters to point 3; thence N. 58° 54′ E., 43.20 meters to point 4; thence N. 47° 11′ E., 13.17 meters to point 5; thence S. 1° 44′ W., 76.00 meters to the point of beginning; containing an area of 3,780 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/27 cylindrical concrete monument; point 2, by Mr–1042/19 cylindrical concrete monument; and the rest, by stakes; hearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 7, Mr–1042 (Market Site)

A parcel of land (lot 7 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the NE. and SE., by proposed road; and on the SW. and NW., by proposed road and creek. Beginning at a point marked 1 on plan, being S. 22° 07′ W., 329.14 meters from Pikit triangulation station (1930), thence S. 70° 15′ E., 150.06 meters to point 2; thence S. 19° 57′ W., 89.37 meters to point 3; thence N. 71° 24′ W., 113.17 meters to point 4; thence E. 12° 19′ E., 23.15 meters to point 5; thence N. 19° 17′ W., 13.02 meters to point 6; thence N. 67° 44′ W., 26.28 meters to point 7; thence N. 20° 36′ E., 57.44 meters to the point of beginning; containing an area of 12,517 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/11 cylindrical concrete monument; point 2, by Mr–1042/26 cylindrical concrete monument; point 3, by Mr–1042/23 cylindrical concrete monument; and the rest, by stakes; bearings true; declina-

tion 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 8, Mr–1042 (Market Site)

A parcel of land (lot 8 as shown on plan Mr–1042), situated in the Poblacion, Municipality of Pikit, Province of Cotabato. Bounded on the NE. and E., by creek; and on the SW. and NW., by proposed road. Beginning at a point marked 1 on plan, being S. 21° 47′ W., 421.53 meters from Pikit triangulation station (1930), thence N. 20° 36′ E., 21.00 meters to point 2; thence S. 65° 32′ E., 21.44 meters to point 3; thence S. 6° 27′ W., 19.22 meters to point 4; thence E. 71° 25′ W., 26.10 meters to the point of beginning; containing an area of 470 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/8 cylindrical concrete monument; and the rest, by stakes; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 9, Mr–1042 (Market Site)

A parcel of land (lot 9 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the NE., by proposed road and creek; on the SE. and SW., by proposed road; and on the NW., by proposed road and creek. Beginning at a point marked 1 on plan, being S. 21° 44′ W., 439.73 meters from Pikit triangulation station (1930), thence S. 70° 24′ E., 28.00 meters to point 2; thence S. 0° 47′ E., 10.18 meters to point 3; thence S. 23° 28′ E., 34.80 meters to point 4; thence S. 70° 03′ E., 43.93 meters to point 5; thence N. 75° 52′ E., 63.64 meters to point 6; thence S. 19° 52′ W., 90.04 meters to point 7; thence N. 70° 47′ W., 150.37 meters to point 8; thence N. 18° 44′ E., 90.95 meters to the point of beginning; containing an area of 10,663 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by Mr–1042/7 cylindrical concrete monument; points 2, 3, 4 and 5, by stakes; point 6, by Mr–1042/25 cylindrical concrete monument; point 7, by Mr–1042/24 cylindrical concrete monument; and point 8, by Mr–1042/17 cylindrical concrete monument; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

Lot 10, Mr–1042 (Market Site)

A parcel of land (lot 10 as shown on plan Mr–1042), situated in the Poblacion, municipality of Pikit, Province of Cotabato. Bounded on the NE., by proposed road; and on the SE. and SW., by creek. Beginning at a point marked 1 on plan, being S. 10° 04′ W., 466.26 meters from Pikit triangulation station (1930), thence N. 70° 17′ W., 34.28 meters to point 2; thence N. 23° 40′ W., 23.57 meters to point 3; thence N. 25° 46′ W., 4.49 meters to point 4; thence S. 70° 27′ E., 88.35 meters to point 5; thence S. 79° 05′ W., 40.31 meters to the point of beginning; containing an area of 1,248 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by stakes; bearings true; declination 1° 23′ E.; date of survey, July 7–9 and August 14, 1953 and that of the approval, July 8, 1954.

In witness hereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 16th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 68

DECLARING MONDAY, SEPTEMBER 27, 1954, A SPECIAL PUBLIC HOLIDAY IN THE PROVINCE OF BATANGAS

WHEREAS, General Miguel Malvar is one of the most heroic figures in our history, being the last Filipino general to surrender in the Filipino-American War; and

WHEREAS, the people of Batangas desire to be given full opportunity to celebrate the 89th birthday of General Malvar on September 27, 1954;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, pursuant to the authority vested in me by section 30 of the Revised Administrative Code, do hereby declare Monday, September 27, 1954, as a special public holiday in the Province of Batangas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 69

RESERVING FOR GOVERNMENT CENTER PURPOSES OF THE CITY OF ZAMBOANGA A CERTAIN PARCEL OF THE PUBLIC DOMAIN KNOWN AS PETTIT BARRACKS SITUATED IN SAID CITY

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I, Ramon Magsaysay, President of the Philippines, hereby withdraw from sale or settlement and reserve for Government center purposes of the City of Zamboanga, subject to private rights, if any there be, a certain parcel of the public domain known as Pettit Barracks, situated in said City and more particularly described to wit:

A parcel of land (as shown in whiteprint plan of the Military Reservation, Pettit Barracks), situated in the City of Zamboanga. Bounded on the N., by property of the City of Zamboanga and swamp land; on the E., by swamp land and river; on the SE., by sea; on the SW., by Basilan Strait; and on the NW., by property of the City of Zamboanga. Beginning at a point marked 1 on whiteprint plan, being thence S. 66° 44′ E., 150.68 meters to point 27; thence N. 23° 24′ E., 4.86 meters to point 3; thence S. 86° 41′ E., 31.18 meters to point 4; thence S. 87° 59′ E., 39.70 meters to point 5; thence N. 89° 41′ E., 9.15 meters to point 6; thence N. 5° 10′ W., 81.88 meters to point 7; thence S. 81° 21′ E., 65.55 meters to point 8; thence S. 43° 26′ E., 143.56 meters to point 9; thence N. 77° 40′ E., 150.56 meters to point 10; thence N. 77° 39′ E., 474.22 meters to point 11; thence N. 77° 39′ E., 15.00 meters to point 12; thence S. 8° 35′ E., 661.26 meters to point 13; thence S. 56° 56′ W., 96.51 meters to point 14; thence S. 74° 12′ W., 11.00 meters to point 15; thence S. 34° 08′ W., 67.20 meters to point 16; thence S. 19° 08′ W., 129.92 meters to point 17; thence N. 63° 58, W., 69.64 meters to point 18; thence due north, 113.68 meters to point 19; thence N. 62° 02′ W., 581.28 meters to point 20; thence N. 33° 11′ W., 41.96 meters to point 21; thence N. 58° 20′ W., 190.12 meters to point 22; thence S. 85° 01′ W., 19.79 meters to point 23; thence N. 57° 31′ W., 103.93 meters to point 24; thence S. 66° 58′ W., 7.21 meters to point 25; thence N. 57° 24′ W., 134.86 meters to point 26; thence N. 38° 11′ E., 34.20 meters to point 27; thence N. 60° 14′ W., 33.78 meters to point 28; thence N. 27° 15′ E., 47.30 meters to point 29; thence N. 27° 15′ E., 92.65 meters to the point of beginning; containing an approximate area of 524,981 square meters, more or less.

NOTE: There are hereby excluded from the operation of this Proclamation the area subject to the leasehold rights under Miscellaneous Lease Application No. V–552 and Foreshore Lease

Application No. V–778 of Antonio M. Bayot and the portions earmarked for the sites of the Department of Agriculture and Natural Resources, the Philippine Constabulary, the National Library, the Philippine Anti-Tuberculosis Society, and the Philippine National Red Cross, as shown and indacated in the revised plan of the Pettit Barracks.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 70

RESERVING FOR PARK AND MARKET SITE EXTENSION PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE CITY OF ZAMBOANGA

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I, Ramon Magsaysay, President of the Philippines, do hereby withdraw from sale or settlement and reserve for park and market site extension purposes, under the administration of the City of Zamboanga, subject to private rights, if any there be, a certain parcel of the public domain situated in the City of Zamboanga and more particularly described to wit:

(*MR–1066—Municipal Reservation*)

A parcel of land (as shown on plan Mr–1066, situated in the City of Zamboanga, Island of Mindanao. Bounded on the NE., by lots Z–A (City of Zamboanga) and 2–B (John Spipig) of plan Swo–8392–Amd., Raja Soliman Road (existing and property of the City Government of Zamboanga (Sunken Garden); on the SE., by road; on the SW., by Basilan Strait; and on the NW., by Basilan Strait and property of the City Government of Zam-

boanga (Market Site). Beginning at a point marked 1 on plan, being S. 12° 25′ W., 200.92 meters from Mon. 51, Zamboanga Townsite Cadastre 14, thence N. 75° 58′ W., 127.92 meters to point 2; thence N. 43° 19′ E., 107.04 meters to point 3; thence N. 9° 59′ E., 29.58 meters to point 4; thence N. 41° 25′ E., 21.00 meters to point 5; thence S. 57° 49′ E., 11.20 meters to point 6; thence S. 57° 49′ E., 12.57 meters to point 7; thence S. 61° 30′ E., 7.52 meters to point 8; thence S. 56° 52′ E., 69.52 meters to point 9; thence S. 28° 10′ W., 112.88 meters to the point of beginning; containing an area of 14,007 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: Point 1, by B. L. marked above cement; point 2, by C. & G. S. Bronze; point 3, by cross marked above side walk of Breakwater; point 4, by B. L. cylinder concrete monument; and the rest, by old corners; bearings true; declination 0° 08′ E., date of survey, August 27, 1954 and that of the approval, September 11, 1954.

NOTE: This is lot 2046, an additional lot of Zamboanga Townsite Cadastre 14, formerly Basilan Strait.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 71

REVOKING PROCLAMATION NO. 285, SERIES OF 1938, AND RESERVING THE LAND EMBRACED THEREIN FOR MARKET SITE PURPOSES, SITUATED IN THE MUNICIPALITY OF TACLOBAN, NOW CITY OF TACLOBAN

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 285, series of 1938, and reserve the land embraced therein situated in the Municipality of Tacloban, now City of Tacloban, for market site pur-

poses under the administration of the City of Tacloban, subject to private rights, if any there be.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 56

CREATING A SECRETARIAT TO TAKE CHARGE OF THE MANILA CONFERENCE OF 1954

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Secretariat to formulate plans and devise ways and means for the appropriate holding of the Manila Conference of 1954 on or about September 6, 1954. The Secretariat shall be composed of the following:

Hon. Raul S. Manglapus, Undersecretary of Foreign Affairs ..... Secretary General

ASSISTANTS TO THE SECRETARY-GENERAL

Minister Mauro Calingo, Counselor on Administration and Controls, Department of Foreign Affairs
Minister Caesar Z. Lanuza, Counselor on Economic Affairs, Department of Foreign Affairs
Mr. Jose Alejandrino, Counselor on Political and Cultural Affairs, Department of Foreign Affairs
Mr. Victorio D. Carpio, Counselor on Legal Affairs, Department of Foreign Affairs
Mr. Alberto Katigbak, Chief, Division of Intelligence, Department of Foreign Affairs
Mr. Jose S. Estrada, Chief of Protocol, Department of Foreign Affairs

Mr. Jose V. Cruz, Press Secretary, Office of the President, is hereby designated as Information and Publicity Officer, and Mr. Juan C. Dionisio, Chief, Division of Foreign Service

Administration, Department of Foreign Affairs, as Administrative Officer of the Secretariat.

The Secretariat shall meet at the call of the Secretary-General and, for the purpose of discharging its functions, may create such committees as may be necessary.

The Secretariat is hereby empowered to call upon any department, office, agency or instrumentality of the Government for such assistance, data, and information as it may need in discharging its duties.

Done in the City of Manila, this 1st day of September, in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 57

CALLING A FORESTRY CONFERENCE AND NAMING THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES TO TAKE CHARGE OF THE CONFERENCE

WHEREAS, our forest resources are essential to the welfare of our people and the economic well-being of our country;

WHEREAS,wanton destruction of these resources has been going on through illegal kaiñgin making and destructive logging practices;

WHEREAS, the evil aftermath of such destruction is now seen in the loss of soil fertility in areas depleted of forests, in unregulated flow of rivers resulting into destructive oods and failure of irrigation systems during periods of critical need, in unfavorable climatic conditions and in the general hardship of our people;

WHEREAS, it has become necessary not only to stop such destruction but also to find ways and means for the orderly utilization and proper conservation of these resources;

NOW, THEREFORE, I, RAMON MAGSAYSAY, President of the Philippines, by virtue of the powers vested in me by

law, do hereby call a Forestry Conference in Manila from September 30 to October 1, 1954, and designate the Secretary of Agriculture and Natural Resources to formulate plans, to take charge of, and coordinate all activities relative to it and empowering him to call upon any agency or instrumentality of the Government for such assistance he may require for the purpose.

Done in the City of Manila, this 10th day of September, in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 58

REPRIMANDING MR. EDGARDO R. HOJILLA AS CHAIRMAN OF THE BOARD OF SPECIAL INQUIRY, BUREAU OF IMMIGRATION

This is an administrative case against Mr. Edgardo R. Hojilla, chairman of the board of special inquiry, Bureau of Immigration, (1) for failing to report to his superiors that Mr. Meneleo Bernardez, a member of his board, was in the habit of taking alcoholic drinks and (2) for not postponing the hearing of the deportation cases against Sy Chuan *alias* Lim Ah Tiong and others on March 25, 1954, until such time as Board Member Bernardez could be sober and would not smell of liquor.

Regarding the first charge, respondent states that membership in a board of special inquiry is changed every week and consequently a member, like Mr. Bernardez, is in his board only during the week he is assigned thereto. This weekly change of a board's composition is confirmed by the administrative officer of the Bureau. Moreover, the fact of Mr. Bernardez' being addicted to liquor is of common knowledge in the Bureau of Immigration for already more than a year. Respondent's explanation is considered satisfactory and he is therefore cleared of this specific charge.

As to the second charge, the respondent explains that there was no way for him to judge whether Member Bernardez was sober or not and he had to relay on the latter's actuations during the proceedings to determine his fitness to participate therein. I am not impressed by the explanation of the respondent, it appearing that Mr. Bernardez admitted to him before the hearing that he had taken a drink and that the respondent was cognizant of Mr. Bernardez' habit of taking alcoholic drinks and of being aggressive and defiant when under the influence of liquor. Uuder the circumstances, he should have suspended or postponed the hearing and reported the matter to the chief of the office.

Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Edgardo R. Hojilla is hereby reprimanded.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 59

CREATING A COMMITTEE TO PLAN, COORDINATE AND SUPERVISE THE BUYING OF PALAY BY THE GOVERNMENT FROM SMALL FARMERS AND TENANTS DURING THE PERIOD OF 1954–1955 RICE HARVEST

For the purpose of planning, coordinating and supervising the program of the Government of purchasing palay during the 1954–1955 harvest from small rice farmers and tenants at floor prices of the proposed loan of ₱30 million to be extended by the Philippine National Bank to the National Rice and Corn Corporation (NARIC) to be utilized by the latter for insuring an adequate supply of rice to our population, a Committee is hereby created composed of the following:

Hon. Salvador Araneta, Secretary of Agriculture and Natural Resources	Chairman
Mr. Juan Chioco, General Manager, National Rice and Corn Corporation	Member
Col. Osmundo Mondoñedo, Administrator, Agricultural Credit and Cooperative Financing Administration	Member
Mr. Ismael Mathay, General Manager, Price Stabilization Corporation	Member
Mr. Venancio Trinidad, Director of Public Schools	Member
Brig. Gen. Florencio Selga, Chief, Philippine Constabulary	Member

The Committee shall devise ways and means of effecting an efficient handling of the purchase of palay from local producers, especially small rice farmers and tenants, and shall determine reasonable floor prices at which such commodity shall be procured, taking into consideration the cost of production incurred by farmers as well as the buying capacity which the Government can afford under the circumstances without causing tremendous losses to the public treasury. It shall also look into such aspects of the problem as warehousing, transportation and widespread dissemination of information of this government activity to reach the farmers in the remotest barrios.

The National Rice and Corn Corporation, the Agricultural Credit and Cooperative Financing Administration and the Price Stabilization Corporation shall render such assistance as the Committee may need in performing its functions.

Done in the City of Manila, this 15th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 60

CREATING THE PHILIPPINE INFORMATION AGENCY TO CARRY OUT A PROGRAM OF INTERNATIONAL PUBLICITY AND PUBLIC RELATIONS FOR THE REPUBLIC OF THE PHILIPPINES

For the purpose of promoting the prestige and national interests of the Republic of the Philippines abroad through the dissemination of accurate information concerning its political, economic, social and cultural conditions and activities, there is hereby created an agency under the Office of the President which shall be administered by a Director and supervised by an advisory board composed of the following:

Hon. Fred Ruiz Castro, Executive Secretary	Chairman
Hon. Oscar Ledesma, Secretary of Commerce and Industry	Member
Hon. Raul S. Manglapus, Undersecretary of Foreign Affairs	Member
Hon. Jose M. Crisol, Undersecretary of National Defense	Member
Col. Nicanor Jimenez, Armed Forces of the Philippines	Member
Mr. Narciso G. Reyes, Foreign Affairs Officer, Executive Secretary of the Board and Director of the Agency	Member

1. The Philippine Information Agency shall have the following duties and functions:

a. To coordinate the preparation of all government information and production of publications intended for overseas circulation.

b. To provide services and materials needed for carrying out government publicity abroad.

c. To establish and maintain contacts for continuous and effective dissemination of government information abroad.

d. To release official texts of government documents for international consumption.

e. To prepare and release information on the government's position on international issues.

f. To prepare background materials on important local issues and developments for use of foreign affairs officers and for circulation abroad.

g. To compile and distribute general information on the Philippines of interest abroad.

2. In carrying out the functions above enumerated, the Philippine Information Agency shall use the following channels of distribution:

a. Philippine embassies and consulates.

b. Trade and business organization, such as the Philippine Association, chambers of commerce with connections abroad, etc.

c. Newspapers abroad.

d. TV and radio stations abroad.

e. Tourist centers.

3. The Philippine Information Agency shall have a central administrative office under the Office of the President. Three regional offices shall be established abroad. The Philippine Embassy in Washington D.C., U. S. A., shall be the regional office of the Agency for North and South America. The Philippine Embassy in London, England, shall be the regional office of the Agency for Europe and Africa. For the time being, the central administra-

tive office of the Agency in Manila shall also be the regional office for Asia, the Southwest Pacific and the Middle East. For the immediate performance of the functions of the Philippine Information Agency in North and South America, the President shall designate an officer in the office of the President to take charge of the regional office in Washington D.C., U. S. A.

The regional offices shall perform the following functions:

a. To plan an information campaign in the region.
b. To supervise production of materials prepared by the Agency.
c. To arrange for translation of materials when necessary for Asian, European and South American countries.

4. The Philippine Information Agency is authorized to call upon any department, bureau, office, agency or instrumentality of the Government, including the corporations owned and controlled by it, for such assistance as it may need in carrying out its functions.

Done in the City of Manila, this 17th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Scertary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 61

CONSIDERING AS RESIGNED MR. MENELEO BERNARDEZ, MEMBER-SECRETARY OF THE BOARD OF SPECIAL INQUIRY, BUREAU OF IMMIGRATION

This is an administrative case against Mr. Meneleo Bernardez, member-secretary of the board of special inquiry, Bureau of Immigration, of drunkenness which was looked into by a special investigator of the Department of Justice.

The record of investigation shows that during the hearing of the deportation cases against Sy Chuan, *alias* Lim Ah Tiong, and others on March 23 and 25, 1954, by a board of special inquiry of the Bureau of Immigration of which the respondent was a member, the latter smelled of liquor

and was very much under the influence of the same, as a result of which he was unsually aggresive and sarcastic in questioning the witness and interpellating the special prosecutor; and that he again smelled and was under the influence of liquor when he was in the office in the morning of March 27, 1954.

Respondent's conduct on the occasions above referred to clearly shows him to be wanting in proper decorum which, besides creating a bad effect upon the morale of the office force, cast a poor reflection on the office in particular and the public service in general, especially with the publication in a local Chinese newspaper about respondent's behavior during the bond hearing of March 23, 1954, to the effect that he was drunk and nearly featured in a fisticuff with defense counsel, in view of which the hearing had to be stopped and postponed to another day. Although the respondent was officially absent from office on March 27, 1954, nevertheless he did not thereby cease to be an official of the Bureau and was therefore amenable for his acts in the office, especially during office hours.

In view of the foregoing, I am constrained to take drastic action against the respondent for highly unbecoming conduct as a public officer. Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Meneleo Bernardez is hereby considered as resigned effective upon receipt of notice hereof.

Done in the City of Manila, this 21st day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 62

AMENDING ADMINISTRATIVE ORDER NO. 37 DATED JUNE 19, 1954, ENTITLED "CREATING A COMMITTEE TO STUDY AND RECOMMEND IMPROVEMENTS OF THE LAW NATIONALIZING THE RETAIL TRADE."

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby amend Administrative Order No. 37 dated June 19, 1954, so as to include Messrs. G. H. W. Churchill and Yao Shiong Shio as additional members of the Committee created therein.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 63

CREATING A COMMITTEE TO INVESTIGATE THE ADMINISTRATIVE CHARGE AGAINST COUNCILORS FRANCIS YUSECO, JUSTO IBAY AND RUPERTO CRISTOBAL OF THE CITY OF MANILA, FOR DISHONESTY

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a committee composed of the following:

1. Dr. Gaudencio Garcia ..... Chairman
2. Mr. Ramon Avanceña, Solicitor, Office of the Solicitor General ..... Member
3. Mr. Jesus Paredes, Technical Assistant, Office of the President ..... Member

to investigate the administrative charge against Councilors Francis Yuseco, Justo Ibay and Ruperto Cristobal of the City of Manila, for alleged dishonesty, in that for and in consideration of the approval by the Municipal Board of a resolution granting permit to the Lirio Terminal Market Association to establish a "talipapa" at a vacant site bounded by Elcano, Asuncion and Zaragoza Streets, City of Manila, the said councilors obtained and received the amount of ₱5,000 from Juanita Lirio y Lanting, President of the said Association.

The Committee is hereby granted all the powers of an investigating committee under Sections 71 and 580 of the

Revised Administrative Code, including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. It is also authorized to call upon any department, bureau, office, agency or instrumentality of the Government for such assistance or information as it may require in the performance of its functions and for this purpose, it shall have access to, and the right to examine any books, documents, papers or records thereof.

This Committee shall submit its report and recommendations within the shortest time possible.

Done in the City of Manila, this 26th day of September, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

REPUBLIC ACTS

Enacted during the First Congress of the Philippines
First Session

H. No. 1907

[REPUBLIC ACT NO. 1156]

AN ACT AMENDING AND REPEALING CERTAIN ITEMS IN REPUBLIC ACT NUMBERED NINE HUNDRED AND TWENTY, REGARDING PUBLIC WORKS PROJECTS FOR THE PROVINCE OF BOHOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following new item is inserted after item (*b*), (8) Province of Bohol, paragraph (*e*), Title B, section one, Republic Act Numbered Nine hundred twenty, as follows:

"(*b–1*) For the construction of Clarin Municipal Town Hall ..... ₱35,000.00"

SEC. 2. Item (*z–o*), (8) Province of Bohol, paragraph (*e*), Title B, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*z–o*) Tubigon Home Economics Building ..... ₱10,000.00
(*z–o–1*) Balilihan Central School Building 5,000.00
(*z–o–2*) Hanapol School Building, Balilihan ..... 3,000.00"

SEC. 3. Item (*d*), Group I, (8) Province of Bohol, paragraph (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*d*) Sikatuna-Balilihan road via Badiang ..... ₱40,000.00"

SEC. 4. Amend item (*i*), Group I, (8) Province of Bohol, paragraph (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, to read as follows:

"(*i*) Poblacion Valle-Hermoso road, Carmen, Bohol ..... ₱30,000.00"

SEC. 5. Item (*o*), Group II, (8) Province of Bohol, paragraph (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*a*) Tubigon Feeder roads from Pinayagan Sur, Panaytayon, Ilijan Norte and Bunacan ..... ₱29,000.00"

SEC. 6. The following item is inserted after item (*r*), Group II, (8) Province of Bohol, paragraph (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, as follows:

"(*r–1*) Balilihan-Hanopol road ..... ₱50,000.00"

SEC. 7. Item (*y*), Group II, (8) Province of Bohol, paragraph, (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*y*) Batuan-Balilihan road ..... ₱30,000.00"

SEC. 8. Item (*z*), Group II, (8) Province of Bohol, paragraph, (*a*), Title C, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*z*) San Jacinto–Borja road ..... ₱62,000.00"

SEC. 9. Item 14, Group I, paragraph (*a*), Title G, section one, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"14. Batasan Sea Wall, Tubigon, Bohol .... ₱10,000.00"

SEC. 10. Item 60, Group II, paragraph (*b*), section two, Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"60. Tubigon Wharf (extension and asphalting of causeway), Bohol..... ₱65,000.00"

SEC. 11. Item 3, paragraph (*d*), Title B; items (*f*), (*i*), and (*j*), Group I, items (*p*) and (*x*), Group II, (8) Province of Bohol, paragraph (*a*), Title C; item 17, Group I, and items 101, 102, and 103, Group II, paragraph (*a*), Title F; item 9, Group I, paragraph (*a*), Title G; section one; and items 63 and 64, Group II, paragraph (*b*), section two, Republic Act Numbered Nine hundred twenty are hereby repealed.

SEC. 12. Funds allocated as repealed herein or so much as are left unexpended therefrom are hereby appropriated to the projects as indicated.

SEC. 13. This Act shall take effect upon its approval.

Approved, June 17, 1954.

H. No. 2003

[REPUBLIC ACT NO. 1157]

AN ACT TO AMEND CERTAIN ITEMS FOR THE PROVINCE OF LA UNION, SUBSECTION (*a*), TITLE E, SECTION ONE, REPUBLIC ACT NUMBERED NINE HUNDRED TWENTY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Items (*d*) and (*e*) of Group I and items (*f*), (*g*) and (*i*) of Group II for the Province of La Union, subsection (*a*), Title E, section one, Republic Act Numbered Nine hundred twenty, are amended to read as follows:

"(*d*) For the construction of an artesian well, including an elevated tank in the poblacion of San Juan ..... ₱10,000.00

"(*e*) For the construction of the communal irrigation system in the barrio of Cabaroan, Bacnotan 10,000.00

"(*f*) For the construction of the communal irrigation system in the barrio of Cadacian, San Fernando 6,000.00

"(*f–1*) For the repair of the communal irrigation system in the barrio of Tanquigan, San Fernando 1,000.00

"(*g*) For the repair and improvement of the Bangar–Señgat–Castro road, in Bangar and Sudipen 5,000.00

"(*i*) For the construction of the communal irrigation system in the barrio of Guinabang, Bacnotan ..... 26,000.00"

SEC. 2. This Act shall take effect upon its approval.

Approved, June 17, 1954.

H. No. 2107

[REPUBLIC ACT NO. 1158]

AN ACT TO AMEND THE ITEM REGARDING THE MUNICIPAL PORT OF CALBAYOG, SAMAR, SECTION TWO, PARAGRAPH (*b*), ITEM FORTY-FIVE OF REPUBLIC ACT NUMBERED NINE HUNDRED TWENTY, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The item regarding the municipal Port of Calbayog in section two, paragraph (*b*), item 45 of Republic Act Numbered Nine hundred twenty is amended to read as follows:

"45. Calbayog, Samar ..... ₱149,000.00"

SEC. 2. Item 41, section two, paragraph (*a*) and items 48, 53, 54, 110, 111, 112 and 113 in section two, paragraph (*b*) are hereby cancelled.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 17, 1954.

S. No. 156

[REPUBLIC ACT NO. 1159]

AN ACT TO AUTHORIZE THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE TO HOLD ONE SPECIAL SWEEPSTAKE RACE FOR THE BUREAU OF PUBLIC SCHOOLS ATHLETIC PROGRAM AS BENEFICIARY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION. 1. The Philippine Charity Sweepstakes Office shall hold in the year nineteen hundred and fifty-four one special sweepstake horse race the net proceeds of which shall, after deducting the payment of the prizes and expenses as provided in Act Numbered Forty-one hundred and thirty, as amended by Commonwealth Act Numbered Five hundred and forty-six, be turned over to the Director of the Bureau of Public Schools, Manila, for the support of its yearly physical education program including the national interscholastic athletic meet, all expenses therefor

to be subject to budgeting and auditing regulations. In said special sweepstake horse race, the prizes for the three winning horses shall be in direct proportion, respectively, to the three main prizes for winning tickets and shall be ten per cent thereof, but in no case shall the total amount of the prizes for winning horses exceed fifty thousand pesos.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 17, 1954.

S. No. 125
H. No. 2254

[REPUBLIC ACT No. 1160]

AN ACT TO FURTHER IMPLEMENT THE FREE DISTRIBUTION OF AGRICULTURAL LANDS OF THE PUBLIC DOMAIN AS PROVIDED FOR IN COMMONWEALTH ACT NUMBERED SIX HUNDRED AND NINETY-ONE, AS AMENDED, TO ABOLISH THE LAND SETTLEMENT AND DEVELOPMENT CORPORATION CREATED UNDER EXECUTIVE ORDER NUMBERED THREE HUNDRED AND FIFTY-FIVE, DATED OCTOBER TWENTY-THREE, NINETEEN HUNDRED AND FIFTY, AND TO CREATE IN ITS PLACE THE NATIONAL RESETTLEMENT AND REHABILITATION ADMINISTRATION, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It is hereby declared to be the policy of Congress to help speed up the free distribution of agricultural lands of the public domain to landless tenants and farm workers who are citizens of the Philippines and to encourage migration to sparsely populated regions pursuant to the fundamental policy of the government to promote the level of production, employment and living standards of the people.

SEC. 2. *National Resettlement and Rehabilitation Administration.*—In furtherance of the above policy, there is hereby created a corporation to be known as National Resettlement and Rehabilitation Administration hereafter referred to as "NARRA" to perform under the supervision and control of the President of the Philippines, through the Office of Economic Coordinator all the duties and functions of the Bureau of Lands as provided in Commonwealth Act Numbered Six hundred and ninety-one, as amended, and such other duties as are hereinafter specified in this Act. It shall be headed by a General Manager and an Assistant General Manager who shall be appointed as hereinafter provided.

SEC. 3. The NARRA shall have at least three divisions, to wit: (1) Settler Selection and Screening, (2) Transportation and Supplies, and (3) Settlement Assistance and Community Work. The General Manager shall submit at the beginning of each fiscal year, but not later than July thirty-one, a program of activities for the whole fiscal year together with the budget of expenditures to

support such a program for the final approval of the President of the Philippines.

POWERS

SEC. 4. *General powers.*—NARRA is hereby authorized to adopt, alter, and use an official seal; to make contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and to make such regulations as are necessary to execute the functions vested in it by this Act.

SEC. 5. *Special powers.*—NARRA is authorized:

(1) To give land, subject to the qualifications, requirements and conditions prescribed by the Public Land Act and under the terms and conditions as may be defined by the Board of Directors, to landless citizens of the Philippines who need, deserve and are capable of tilling the land;

(2) To facilitate the settlement, acquisition and cultivation of agricultural lands;

(3) To acquire by purchase such agricultural portions of landed estates as may be directed by the President of the Philippines for the prosecution of the policy stated in section one of this Act;

(4) To reclaim swamps and marshes, obtain title thereto where feasible, and to convert them into agricultural lands for settlement;

(5) To promote community life in the settlements;

(6) To borrow money from any credit institution for any of the purposes herein provided;

(7) To survey, subdivide and set aside lots or areas of such lands for farming, townsites, roads, parks, government centers, and other public and civic improvements, and to dispose of farm lands and townsite lots to persons qualified to the extent of areas authorized under the Constitution and the Public Land Act, subject to such other qualifications and to prices, terms and conditions as may be prescribed by the Board of Directors;

(8) To secure for the settlers from other government agencies such assistance and facilities as may be necessary to accelerate development, cultivation and electrification of settlements; construction of irrigation systems; institution of credit facilities; enhancement of cottage industries; and establishment of processing plants, warehouses and marketing facilities; and

(9) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the policy enunciated in this Act.

SEC. 6. In addition to the functions and duties specified and to implement the same properly, the NARRA shall undertake the following activities:

(1) To select and screen applicants for allocation within the areas set aside for purposes of settlement in the public domain who (*a*) are *bona fide* farmers in the highly settled areas, (*b*) do not own any land with an area of five hectares or more, (*c*) have not owned any homestead, (*d*) have not secured any homestead rights from any homesteader, (*e*) are capable of discharging their responsibilities as settlers, and (*f*) shall work the land in the settlement areas on the basis of the family-operated, family-type farms: *Provided,* That in selecting applicants the

following order or priority shall be observed: (*a*) actual *bona fide* tenants or occupants of the land; (*b*) surrendered dissidents, who take an oath and show sincere desire, to support the Constitution of the Philippines; (*c*) graduates of agricultural schools and colleges; (*d*) trainees who have completed military training; (*e*) veterans and members of guerrilla organizations; and (*f*) other applicants possessing the qualifications required herein.

(2) To assist settlers in transporting themselves, their belongings, work animals and farm equipment, if any, from the communities from which they are migrating to the settlement areas reserved for the purpose, and for subsistence necessary until credit can be provided by the Agricultural Credit and Cooperative Financing Administration (ACCFA) under section thirteen of this Act, or by any other credit institution by loaning to them the full amount required for such purposes. These loans shall be non-interest bearing, a lien upon the land, and shall be amortized over a period of ten years, payable annually beginning with the end of the third year after the date of arrival in the settlement area, subject to the right of the borrower to pay in full at any time prior to the maturity of the loan;

(3) To assist the said settlers in securing equipment, supplies and materials needed in the settlement areas at the most advantageous prices or terms, and, if requested, to assist the cooperative associations of the new settlers in securing the most advantageous prices or terms on farm implements and supplies needed by the cooperative associations and their members;

(4) To help provide housing and other accommodations for the new settlers in the settlement areas upon arrival by locating them in properly surveyed and subdivided lots reserved for the purpose, to help organize community activities that the new settlers require upon arrival in the new settlement, and to cooperate with the agricultural extension service, the Bureau of Health, the Bureau of Public Schools and other pertinent agencies of the Government, in providing the services for the proper establishment of community facilities as well as the organization of collective efforts essential to development in the new settlement areas.

(5) To submit its annual report and balance sheets to the President and the Congress of the Philippines, as provided in sections five hundred and seventy-four to five hundred and seventy-seven of the Administrative Code;

(6) To appoint and fix the number and salaries, upon recommendation of the Office of Economic Coordination and with the approval of the President of the Philippines and subject to Civil Service Law and Rules and the salary law, of such subordinate personnel as may be necessary for the proper discharge of its duties and functions and upon recommendation of the Office of Economic Coordination and with the approval of the President, suspend, remove or otherwise discipline, any of its subordinate employees, and

(7) To perform such other related duties as may be assigned to it by the President of the Philippines from time to time.

SEC. 7. *Board of Directors—Its Composition, tenure of office and meetings.*—The powers and functions of NARRA shall be exercised by a Board of Directors to be composed of a Chairman and five members. They shall be appointed by the President of the Philippines with the consent of the Commission on Appointments for a term of three years. Any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

The Board shall hold regular meetings and such number of special meetings as may be called by the Chairman or any three members from time to time: *Provided, however,* That the total number of meetings of the Board shall not be more than four a month. The Chairman and the members shall each receive a per diem of twenty-five pesos for every meeting actually attended.

SEC. 8. *Powers and duties of the Board of Directors.*—The Board of Directors shall have the following powers and duties:

(1) To prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the general business of NARRA may be exercised, including provisions regarding subdivision of lands into small farm lots, distribution thereof, initial aid to settlers and manner of payment of such lots, and provisions for the formation of such committee or committees as the General Manager may deem necessary to facilitate the business of the NARRA, and to expedite the disposition of, and the issuance of titles, over said farm lots as contemplated in section five;

(2) To appoint and fix the term of office of the General Manager, and Assistant General Manager, whose compensation shall be twelve thousand pesos per annum for the General Manager, and nine thousand pesos per annum for the Assistant General Manager, subject to the recommendation of the Office of Economic Coordination and the approval of the President of the Philippines, and to appoint and fix the compensation of a Secretary of the Board and such other officers of the Corporation as may be needed. The Board, by a majority vote of all the members, may for cause, upon recommendation of the Office of Economic Coordination and with the approval of the President of the Philippines, suspend and/or remove the General Manager and/or the Assistant General Manager; and

(3) To approve the annual budget and such supplemental budgets of NARRA which may be submitted to it by the General Manager from time to time.

SEC. 9. NARRA shall be the custodian and administrator of public lands reserved or may hereafter be reserved by the President of the Philippines for settlement, all lands actually reserved for the Land Settlement and Development Corporation (LASEDECO), and the agricultural lands surveyed and subdivided under Commonwealth Act Numbered Six hundred ninety-one.

SEC. 10. The Land Settlement and Development Corporation created under Executive Order Numbered Three hundred fifty-five, dated October twenty-three, nineteen hundred and fifty, known for short as LASEDECO, is hereby abolished, and all its obligations under said Executive Order, except its commercial accounts which are to be paid as hereinafter provided, are hereby transferred to the

Treasury of the Philippines to be amortized over a period of fifteen years subject to the availability of funds of the Government.

All assets of the LASEDECO, including farm machinery and equipment, shall be turned over to a Board of Liquidators and shall be sold at public auction, the proceeds thereof to be used in paying off its accounts with commercial firms and the net proceeds to be transferred to the Agricultural Credit and Cooperative Financing Administration (ACCFA) for loan to settlers or cooperative organizations of settlers as provided for under this Act: *Provided, however,* That such buildings, equipment and machinery as may be needed by settlers' cooperatives either in the area where such property is located or in areas being settled under the provisions of this Act may be transferred to the said cooperatives at an appraised value fixed by the Board of Liquidators.

SEC. 11. To carry out the purposes of this Act, there is hereby appropriated for the "Revolving Fund of the Colonists", as provided for in Commonwealth Act Numbered Six hundred and ninety-one, the sum of five million pesos for the fiscal year 1954-55 out of any funds in the National Treasury not otherwise appropriated, to be spent by the NARRA upon recommendation of the Office of Economic Coordination and under the supervision and authority of the President of the Philippines for the activities prescribed herein. A sum of not less than eight million pesos for every fiscal year thereafter, for a period of ten years, shall be included in the General Appropriation Acts for the subsequent fiscal years for the said "Revolving Fund of the Colonists" to carry out the purposes of this Act.

SEC. 12. All public agricultural lands referred to in section fourteen of Executive Order Numbered Three hundred and fifty-five, dated October twenty-three, nineteen hundred and fifty, are hereby transferred to the jurisdiction of the NARRA to be disposed of in accordance with the provisions of this Act: *Provided,* That the settlement of the agricultural lands so transferred under this section by voluntary settlers who do not receive any direct assistance under the provisions of this Act or by duly qualified homestead applicants shall not be precluded nor obstructed.

SEC. 13. In addition to the financial aid that may be given to settlers from the "Revolving Fund of the Colonists", the Agricultural Credit and Cooperative Financing Administration (ACCFA) created under Republic Act Numbered Eight hundred and twenty-one is hereby authorized to give loans or financial assistance to the settlers or settlers' cooperatives to help establish themselves as independent farmers following their arrival in the settlement areas: *Provided, however,* That it may require any borrower to become a *bona fide* member of a cooperative association in the settlement areas as a condition for giving such financial aid or loan. Such loans shall be subject to the conditions specified in section six, subsection two, of this Act, with the modification that the lien shall be on the borrower's produce and that the amortization period shall begin one year after the date of the loan.

TRANSITORY AND SPECIAL PROVISIONS

SEC. 14. The officials, employees and laborers of the

virtue hereof and who are entitled to retire under Republic Act Numbered Six hundred sixty shall be so retired upon the payment of the obligations of the LASEDECO to the Government Service Insurance System subsisting under said account on the date of the approval hereof. Those who may not be retired shall be entitled to thirty days' separation pay, the money value of earned vacation and sick leaves, and gratuity which shall be paid in one lump sum equivalent to one month's salary for every year of satisfactory service rendered in any branch of the government and government agencies and instrumentalities on the basis of the highest salary received by them: *Provided,* That any of said officials, employees or laborers who has rendered less than one year of service shall be paid in one lump sum a gratuity equivalent to one-half of one month's salary: *And provided, further,* That in case of subsequent reinstatement in the Government service or in any Government-owned or controlled corporation of any such official, employee or laborer who has been paid gratuity hereunder, he shall refund to the National Government the value of the gratuity which he would not have as yet received if it had been payable in monthly installments.

SEC. 15. Subject to the provisions of section ten hereof, the President of the Philippines shall provide by executive order for the liquidation of the assets and liabilities of LASEDECO and is hereby authorized to transfer to NARRA such properties, equipment, assets and rights of LASEDECO as may be needed by the former in carrying out the purposes and objectives of this Act.

SEC. 16. Any provision of law to the contrary notwithstanding, all surveyed portions of the public agricultural lands heretofore transferred or reserved for the administration of NARRA under this Act and of those which may hereafter be transferred by the President of the Philippines to NARRA for the purposes of this Act, shall be ceded to NARRA, and the President of the Philippines shall from time to time cause the issuance of patents or other deeds transferring title to such lands to NARRA in accordance with the provisions of the Public Land Act and such rules and regulations as may be promulgated to facilitate the transfer of title to NARRA.

PENAL PROVISIONS

SEC. 17. No officer or employee of NARRA shall be permitted in any manner to acquire, directly or indirectly, any land within the land settlement projects of NARRA. Any such officer or employee who violates the provisions of this section shall immediately be removed by competent authority and said officer or employee shall be punished by imprisonment for not less than one year nor exceeding five years and by a fine of not less than one thousand nor more than five thousand pesos. Should a dummy be used to violate the provisions of this section, the same penalty shall be applied to the dummy.

SEC. 18. No official or employee of the Corporation shall directly or indirectly be financially interested in any contract with the corporation or in any special privilege granted by said corporation during his term of office. Any violation of this prohibition shall be punished by dismissal

from office and by a fine of not more than five thousand pesos and imprisonment of not more than five years.

MISCELLANEOUS PROVISIONS

SEC. 19. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person, circumstance, or transaction is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons, circumstances, and transactions shall not be affected thereby.

SEC. 20. All Acts, parts of Acts, and any special charters, or parts thereof, inconsistent herewith are hereby repealed.

SEC. 21. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 15
S. No. 148

[REPUBLIC ACT NO. 1161]

AN ACT TO CREATE A SOCIAL SECURITY SYSTEM PROVIDING SICKNESS, UNEMPLOYMENT, RETIREMENT, DISABILITY AND DEATH BENEFITS FOR EMPLOYEES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short title.*—This Act shall be known as "The Social Security Act of 1954."

SEC. 2. *Declaration of policy.*—It is hereby declared to be the policy of the Republic of the Philippines to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines, and shall provide protection against the hazards of unemployment, disability, sickness, old age and death.

A. *Administration*

SEC. 3. *Social Security Commission.*—(*a*) To carry out the purposes of this Act, a Social Security Commission is hereby created to be composed of the Secretary of Labor, the Secretary of Health, the Social Welfare Administrator, the General Manager of the Government Service Insurance System and three other members to be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chairman of the Commission shall be designated by the President of the Philippines. The term of the appointive members shall be three years: *Provided,* That the terms of the first three appointees shall be one, two and three years, respectively. All vacancies, except through expiration of the term, shall be filled for the unexpired term only. Members of the Commission who are public officers shall not receive any additional compensation, but members who are private citizens shall receive twenty pesos for each meeting actually attended by them: *Provided,* That no compensation shall be paid for more than one meeting a week.

(*b*) The Commission shall have under its general supervision an Administrator who shall serve as the chief executive officer immediately responsible for carrying out the program of the Social Security System hereby created

and the policies of the Commission. The Administrator shall be a person who has had previous experience in technical and administrative fields related to the purposes of this Act. He shall be appointed by the President of the Philippines with the consent of the Commission on Appointments, and shall receive a salary to be fixed by the Commission with the approval of the President, payable from the funds of the System.

(*c*) The Commission, upon the recommendation of the Administrator, shall appoint an actuary, medical director, and such other personnel as may be deemed necessary, shall fix their compensation, prescribe their duties and establish such methods and procedures as may insure the efficient, honest and economical administration of the provisions and purposes of this Act.

SEC. 4. *Powers and duties of Commission.*—For the attainment of its main objectives as set forth in section two hereof, the Commission shall have the following powers and duties:

(*a*) To select one or more experimental areas wherein any, some or all of the aspects of social security may be initially tried, taking into account:

1. nature and number of establishments;
2. type of industries;
3. number of employees to be covered;
4. amount and rate of return to investment; and
5. such other factors as the Commission may find relevant to the choice of the most suitable area for the initiation of the System.

Should the Commission find it impracticable or unduly discriminatory to apply the System to a particular area, it may determine its application on the basis of the size of establishments and the economic conditions of employers.

(*b*) To extend subsequently the experimentation to such other areas and industry or industries as experience and the conditions obtaining therein may warrant.

(*c*) To adopt, amend and rescind, subject to the approval of the President, such rules and regulations as may be necessary to carry out the provisions and purposes of this Act.

(*d*) To submit annually in January a public report to the President and to each House of the Congress of the Philippines covering its activities in the administration and enforcement of this Act during the preceding year and including information and recommendations on broad policies for the development and perfection of the System.

(*e*) To insure the making of the necessary actuarial studies and calculations concerning the financial stability of the System, and to make within the limitations herein provided, such readjustments of benefits, scope of protection, or the proportion of the fund allocated to the contingencies covered as may be necessary, taking into consideration such studies and calculations.

(*f*) To establish branches of the System whenever and wherever it may be expedient or necessary, and to inspect or cause to be inspected periodically such branches.

(*g*) To enter into agreements or contracts for such service and aid, as may be needed for the proper, efficient and stable administration of the System.

(*h*) To require reports, compilations and analysis of statistical and economic data and to make investigations

as may be needed for the proper administration and development of the System.

(*i*) To acquire property, real or personal, which may be necessary or expedient for the attainment of the purposes of this Act.

(*j*) To sue and be sued in court.

(*k*) To perform such other acts as it may deem appropriate for the proper enforcement of this Act.

SEC. 5. (*a*) *Settlement of claims.*—The filing, determination and settlement of claims shall be governed by the rules and regulations promulgated by the Commission. If the money is payable to the estate of a deceased person, the System shall pay the same to such person or persons as it may ascertain to be lawfully entitled thereto.

(*b*) *Appeal to courts.*—Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final fifteen days after the date of notification, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented by an attorney employed by the Commission, or when requested by the Commission, by the Solicitor General or any fiscal.

(*c*) *Court review.*—The decision of the Commission upon any disputed matter may be reviewed both upon the law and the facts by the Court of Appeals. For the purpose of such review the procedure concerning appeals from the Court of First Instance shall be followed as far as practicable and consistent with the purposes of this Act. Appeal from a decision of the Commission must be taken within fifteen days from notification of such decision. If the decision of the Commission involves only questions of law, the same shall be reviewed by the Supreme Court. No appeal bond shall be required. The case shall be heard in a summary manner, and shall take precedence over all cases, except that in the Supreme Court, criminal cases wherein life imprisonment or death has been imposed by the trial court shall take precedence. No appeal shall act as a *supersedeas* or a stay of the order of the Commission, unless the Commission itself, or the Court of Appeals, or the Supreme Court, shall so order.

SEC. 6. *Auditor and Counsel.*—(*a*) The Auditor General and the Secretary of Justice shall be the *ex officio* Auditor and the Counsel, respectively, of the System.

(*b*) The Auditor General or his representative shall check and audit all the accounts, funds and properties of the System in the same manner and as frequently as the accounts, funds and properties of the government are checked and audited under existing laws; and they shall have as far as practicable, the same powers and duties as they have with respect to the checking and auditing of public accounts, funds and properties in general. The Secretary of Justice or his representative shall act as legal adviser and counsel of the Commission.

SEC. 7. *Oaths, witnesses, and production of records.*—When authorized by the Commission, an official or employee thereof shall have the power to administer oath and affirmation, take depositions, certify to official acts, and issue *subpoena* and *subpoena duces tecum* to compel the attend-

ance of witnesses and the production of books, papers, correspondence, and other records deemed necessary as evidence in connection with any question arising under this Act. Any case of contumacy shall be dealt with in accordance with the provisions of section five hundred eighty of the Administrative Code.

B. *Definitions*

SEC. 8. *Terms defined.*—For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

(*a*) *System.*—The Social Security System created by this Act.

(*b*) *Commission.*—The Social Security Commission as herein created.

(*c*) *Employer.*—Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government.

(*d*) *Employee.*—Any person who performs services for an "employer" in which either or both mental and physical efforts are used and who receives compensation for such services.

(*e*) *Dependent.*—Any unmarried legitimate or legitimated child of the covered employee who is under eighteen years of age, and any such child over eighteen years of age, and the legitimate spouse and parents of said employee who are unable to work and who are wholly dependent upon regular support from him.

(*f*) *Compensation.*—All remuneration for employment, including the cash value of any remuneration paid in any medium other than cash, except (1) that part of the remuneration in excess of five hundred pesos received during the month, (2) bonuses, allowances, or overtime pay given in addition to the regular or base pay, and (3) dismissal and all other payments which the employer may make though not legally required to do so.

(*g*) *Daily rate of compensation.*—The total regular compensation for the customary number of hours worked each day, or the total regular monthly compensation divided by the number of working days in a month.

(*h*) *Monthly.*—The period from one end of the last payroll period of the preceding month to the end of the last payroll period of the current month if compensation is on hourly, daily or weekly basis; if on any other basis, "monthly" shall mean a period of one month.

(*i*) *Premium.*—The contributions paid to the System by the employee and by his employer for him.

(*j*) *Employment.*—Any service performed by an employee for his employer, except—

(1) Agricultural labor;
(2) Domestic service in a private home;
(3) Employment purely casual and not for the purposes of occupation or business of the employer;
(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service per-

formed by a child under the age of twenty-one years in the employ of his parents;

(5) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines;

(6) Service performed in the employ of the Philippine Government or an instrumentality or agency thereof;

(7) Service performed in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes therein;

(9) Service performed in the employ of a foreign government or international organization, or their wholly-owned instrumentality;

(10) Service performed as a student nurse in the employ of a hospital or nurses' training school, and service performed as an intern in the employ of a hospital by an individual who holds the degree of Doctor of Medicine; and

(11) Such other services performed by temporary employees which may be excluded by regulation of the Commission. Employees of *bona fide* independent contractors shall not be deemed employees of the employer engaging the services of said contractors.

C. *Scope of the System*

SEC. 9. (*a*) *Compulsory coverage.*—Upon determination by the Commission pursuant to paragraphs (*a*) and (*b*) of section four hereof, coverage in the System shall be compulsory upon all employees between the ages of eighteen and sixty years, inclusive, if they have been for at least six months in the service of an employer who is a member of the System: *Provided,* That the Commission may not compel any employer to become a member of the System unless he shall have been in operation for at least three years and has, at the time of admission, two hundred employees: *Provided, further,* That any employer otherwise qualified to be a member may be exempted by the Commission from the provisions of this Act (*a*) if said employer can satisfactorily show that he did not make any profit in any one year for the last three consecutive years, or (*b*) if he is maintaining for his employees an equivalent plan to which the employee's compulsory contributions are not higher, and the employer's contribution not lower, than those required in this Act: *Provided, further,* That any such employer, with the consent of the majority of his employees participating in the plan, may liquidate such plan and become a member of the System: *Provided, finally,* That any amount accruing to an employee as a result of such liquidation shall not be paid to him but shall be remitted to the System to be credited to his account therein.

An employer exempt from the provisions of this Act for the reason that he has an equivalent plan shall, nevertheless, be a member of the System with respect to all his other employees who are not included in such plan, or who may refuse to join or continue under said plan.

(*b*) *Voluntary coverage.*—Under such rules and regulations as the Commission may prescribe, any employer not required to be a member of the System may become a member thereof and have his employees come under the provisions of this Act if the majority of his employees do not object; and any individual in the employ of the Government, or of any of its political subdivisions, branches, or instrumentalities, including corporations owned or controlled by the Government, as well as any individual employed by a private entity not subject to compulsory membership under this Act may join the System by paying twice the employee's contribution prescribed in section nineteen. Any other individual may likewise join the System, subject to such rules and regulations as may be prescribed by the Commission.

SEC. 10. *Effective date of coverage.*—(*a*) Compulsory coverage of any employee shall take effect on the first day of the calendar month following the month when his employer qualified as a member of the System, provided said employee has rendered at least six months' service.

(*b*) Voluntary coverage shall take effect on the first day of the calendar month following the month when his voluntary membership in the System was approved.

SEC. 11. *Effect of separation from employment.*—When an employee under compulsory coverage is separated from employment, his employer's contribution on his account shall cease at the end of the month of separation, but said employee may continue his membership in the System and receive the benefits of this Act, in accordance with such rules and regulations as may be promulgated by the Commission.

D. *Benefits*

SEC. 12. *Retirement benefits.*—(*a*) Upon retirement, an employee shall be entitled to a life annuity payable monthly as long as he lives but in no case for less than two years. The amount of his monthly annuity shall be whatever eighty *per centum* of the premiums credited to his account with three *per centum per annum* interest, compounded monthly, shall purchase at his retirement, according to the mortality table and rate of interest adopted by the Commission: *Provided,* That the percentage of the premiums with interest to the credit of an employee which may be applied to the purchase of retirement benefits may be changed by the Commission in accordance with such rules as it may adopt, but in no case shall such percentage be less than seventy per cent nor more than ninety per cent of the premiums with interest to the credit of the employee: *Provided, further,* That if the employee has paid his contributions for at least ten years and has rendered to an employer at least three years of continuous service immediately prior to his retirement, the minimum amount of the monthly annuity shall be twenty-five pesos: *Provided, further,* That if the premiums set aside for the purchase of the annuity be not sufficient to satisfy the said minimum amount,

one-half of the deficit shall be borne and paid to the System by his last employer in accordance with such rules to cover the other half, the employee's monthly contribution provided in section nineteen hereof shall be continued and regulations as the Commission may prescribe, and and deducted from his annuity as long as necessary, but in no case for a period exceeding ten years.

(*b*) During the reemployment of a retired employee his annuity shall be suspended and he shall be subject again to the provisions of section nineteen hereof, and his employer to section twenty.

(*c*) On reaching the age of sixty years and after having rendered at least five years of service in an employment, a covered employee shall have the option to retire under this Act.

SEC. 13. *Death and disability benefits.*—(*a*) Upon the covered employee's death or total and permanent disability under such conditions as the Commission may define, before becoming eligible for retirement and if either such death or disability is not compensable under the Workmen's Compensation Act, he or, in case of his death, his beneficiaries as recorded by his employer shall be entitled to the following benefit: If the employee dies or becomes disabled and he has paid less than thirteen monthly contributions as provided in section nineteen hereof, his accumulated premiums only shall be paid; or if he has paid from thirteen to twenty-four, or from twenty-five to thirty-six, or from thirty-seven to forty-eight, or more than forty-eight monthly contributions, the benefit shall be, respectively, equivalent to thirty *per centum,* fifty *per centum,* seventy-five *per centum,* and one hundred *per centum* of the average monthly compensation he has received during the year multiplied by twelve: *Provided,* That in all cases he must have paid the contribution for the calendar month immediately preceding the month during which he died or became disabled: *Provided, further,* That he or his beneficiaries shall be given a grace period of one month within which to pay such contribution: *Provided, finally,* That if his death or disability is compensable under the Workmen's Compensation Act and the amount payable thereunder is less than what would have been payable to him or his beneficiaries under this section, the difference between the two amounts shall be paid by the System.

(*b*) If the disability is partial but permanent, the amount or benefit shall be such percentage of the benefit described in the preceding paragraph as the Commission may determine, with due regard to the degree of disability.

SEC. 14. *Sickness benefit.*—(*a*) Under such rules and conditions as the Commission may prescribe, any covered employee under this Act who, after one year at least from the date of his coverage, on account of sickness or bodily injury is confined in a hospital, or elsewhere with the Commission's approval, shall, for each day of such confinement, be paid by his employer, or by the System if such person is a voluntary member, an allowance equivalent to twenty *per centum* of his daily rate of compensation, plus five *per centum* thereof for every dependent if he has any, but in no case shall the total amount of such daily allowance exceed six pesos, or sixty *per centum* of his daily rate of compensation, whichever is the smaller amount, nor paid for a period longer than ninety days

in one calendar year: *Provided,* That he has paid the required premiums for at least six months immediately prior to his confinement: *Provided, further,* That the payment of such allowance shall begin only after the first seven days of confinement, except when such confinement is due to injury or to any acute disease; but in no case shall such payment begin before all leaves of absence with pay, if any, to the credit of the employee shall have been exhausted: *Provided, further,* That any contribution which may become due and payable by the covered employee to the System during his sickness shall be deducted in installments from such allowances, issuing to him the corresponding official receipt upon complete payment of such contribution: *Provided, finally,* That the total amount of the daily allowances paid to the covered employee under this section shall be deducted from the death or disability benefit provided in section thirteen if he dies or becomes totally or permanently disabled within five years from the date on which the last of such allowances became due and payable.

(*b*) Seventy *per centum* of the daily benefits paid by an employer as provided in the preceding paragraph shall be reimbursed by the System to said employer upon receipt of satisfactory proof of such payment and of the legality thereof.

SEC. 15. *Unemployment benefit.*—(*a*) Subject to the rules and regulations of the System, any employee covered under this Act who, after one year at least from the date of his coverage, becomes unemployed for any reason other than his misconduct, voluntary resignation without sufficient cause attributable to his employer, or an act of God, shall be entitled, for each day except holiday, to an allowance equivalent to twenty *per centum* of his daily rate of compensation, plus five *per centum* thereof for every dependent if he has any, but in no case shall the total amount of such daily allowance exceed six pesos, or fifty *per centum* of his daily rate of compensation, whichever is the smaller amount, nor be paid for a period longer than ninety days in one calendar year: *Provided,* That the covered employee has worked for his employer and paid the required premiums during the preceding year for at least twenty-six weeks, of which four weeks must immediately precede his unemployment: *Provided, further,* That the payment of said allowances shall begin only after the first three weeks of unemployment, which period the Commission, however, may reduce to two weeks if the covered employee has dependents; but in no case shall such payment begin before all leaves of absence with pay, if any, to the credit of the employee shall have been exhausted: *Provided, further,* That payment of such allowances shall be suspended if his continued unemployment is due to his failure, without good cause, to apply for available suitable work, or to avail himself of a reasonable opportunity for suitable work, or to accept suitable work when offered to him: *Provided, further,* That the total amount of the daily allowances paid to the covered employee under this section shall be deducted from the death or disability benefit provided in section thirteen if he dies or becomes totally and permanently disabled within five years from the date on which the last of such allowances becomes due and payable: *Provided, finally,* That no benefit

shall be paid unless the unemployed claimant has registered at a public employment office or other approved agency and, upon investigation, the System is satisfied that he has complied with such rules and conditions as the Commission may have prescribed.

(*b*) As used in this Act, "suitable work" means work in the usual employment of the covered employee, or other employment for which he is reasonably fitted: *Provided,* That no work shall be deemed suitable if—

(1) The position offered is vacant due directly to a strike, lockout, or other labor dispute; or
(2) The wages, hours, or other conditions of the work are substantially less favorable to the covered employee than those prevailing for similar work in the locality; or
(3) As a condition of the employment, the covered employee is required to join a company union, or to resign from, or refrain from joining, any *bona fide* labor organization.

SEC. 16. *Non-transferability of benefit.*—Benefits under this Act are not transferable, and no power of attorney or other document executed by those entitled thereto in favor of any agent, attorney, or any other individual for the collection thereof in their behalf shall be recognized except when they are physically and legally unable to collect personally such benefits.

SEC. 17. *Exemption from tax, legal process and lien.*—All papers or documents which may be required in connection with the operation or execution of this Act, all the contributions collected and payments of benefits made thereunder, and all accruals thereto shall be exempt from any tax, assessment, fee or charge, and such payments shall not be liable to attachment, garnishment, levy, or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the covered employee to the System.

SEC. 18. *Fee of agents, attorneys, etc.*—No agent, attorney or other person in charge of the preparation, filing or pursuing any claim for benefit under this Act shall demand or charge for his services any fee in excess of five *per centum* of the amount of such benefit, which fee shall not be payable before the actual payment of the benefit, and any stipulation to the contrary shall be null and void. The retention or deduction of any amount from any benefit granted under this Act for the payment of fees for such services is prohibited. Violations of any provision of this section shall be punished by a fine of not less than five hundred pesos nor more than five thousand pesos, or imprisonment for not less than six months nor more than one year, or both, at the discretion of the court.

E. *Sources of Funds—Employment Records and Reports*

SEC. 19. *Employee's contribution.*—Beginning as of the last day of the calendar month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, there shall be deducted and withheld from the monthly

compensation of such covered employee a contribution equal to three *per centum* of his monthly compensation.

SEC. 20. *Employer's contribution.*—Beginning as of the last day of the month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, his employer shall pay, with respect to such covered employee in his employ, a monthly contribution equal to three *per centum* of the monthly compensation of said covered employee. Notwithstanding any contract to the contrary, an employer shall not deduct, directly or indirectly, from the compensation of his employees covered by the System or otherwise recover from them the employer's contributions with respect to such employees.

SEC. 21. *Collection and payment of contributions.*—(*a*) The contributions imposed in the preceding sections shall be collected and remitted to the System at the end of each calendar month under such rules and regulations as the System may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment, and if any contribution is not paid to the System within thirty days from its due date or the date prescribed for its remittance, he shall pay besides the contribution a penalty thereon of three *per centum* per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided,* That upon separation of an employee, any premium so paid in advance but not due shall be credited or refunded to his employer.

(*b*) The contributions payable under this Act in cases where an employer refuses or neglects to pay the same shall be collected by the System in the same manner as taxes are made collectible under the National Internal Revenue Code, as amended. Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the covered employee to the benefits of the coverage.

(*c*) Should any person, natural or juridical, default in any payment of contributions, the Commission may also collect the same in either of the following ways:

(1) By an action in court, which shall hear and dispose of the case in preference to any other civil action, or

(2) By issuing a warrant to the Sheriff of any province or city commanding him to levy upon and sell any real and personal property of the debtor. The Sheriff's sale by virtue of said warrant shall be governed by the same procedure prescribed for executions against property upon judgments by a court of record.

SEC. 22. *Method of collection and payment.*—The Commission is hereby empowered to prescribe such rules, regulations, and conditions as may be necessary or helpful in securing a complete and proper collection and payment of contributions and proper identification of the employer and the employee. Payment may be made in cash, checks,

stamps, coupons, tickets, or other reasonable devices that the Commission may adopt.

SEC. 23. *Employment records and reports.*—(*a*) Each employer shall report immediately to the System the names, ages, civil status, occupations, salaries and dependents of all his employees, who are in his employ and who are or may later be subject to compulsory coverage: *Provided,* That if an employee subject to compulsory coverage should die or become sick, unemployed or disabled without the System having previously received a report about him from his employer, the said employer shall pay to the employee or his legal heirs damages equivalent to the benefits to which said employee would have been entitled had his name been reported on time by the employer to the System.

(*b*) Every employer shall keep true and accurate work records for such periods and containing such information as the Commission may prescribe. Such records shall be open to inspection and copy thereof shall be furnished to the Commission or its authorized representatives quarterly or as often as the Commission may require. The System may also require each employer to submit, with respect to the persons in his employ, reports needed for the effective administration of this Act.

F. *Funds of the System*

SEC. 24. *Deposit and disbursement.*—All moneys paid to or collected by the system under this Act, and all accruals thereto shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other public special funds: *Provided,* That of the total yearly collection of such moneys and their accruals, not more than twelve *per centum* during the first two years of operation of the System nor more than ten *per centum* during any year thereafter shall be disbursed for the payment of salaries and wages and purchase of office equipment and materials.

SEC. 25. *Investment of funds—Reserve fund.*—Twenty *per centum* of such portions of the funds or moneys of the System as are not needed to meet the current obligations thereof and the expenses incidental to the carrying out of this Act, shall be reserved annually, shall be allowed to accumulate and shall be credited to a fund to be known as the "Reserve Fund" to meet and cover contingent and extraordinary disbursements for death and disability claims under this Act, and the remaining eighty *per centum* shall be invested by the Commission in any or all of the following ways only:

(*a*) In interest-bearing bonds or securities of the Government of the Philippines, or bonds or securities for the payment of the interest and principal to which the faith and credit of the Republic of the Philippines is pledged.

(*b*) In interest-bearing deposits in any domestic bank doing business in the Philippines having an unimpaired paid-up capital and surplus equivalent to one million five hundred thousand pesos or over: *Provided,* That said bank shall first have been designated as a depositary for this purpose by the President, upon recommendation of the Secretary of Finance.

(*c*) In loans or advances to the National Government for the construction of permanent toll bridges in accordance with the conditions prescribed by the law in such cases.

SEC. 26. *Records and reports.*—The Administrator shall keep and cause to be kept records of operations, of the funds of the System and of disbursements thereof, and all accounts of payments made out of said funds. During the month of January of each year, the Administrator shall prepare for submission to the President and to the Congress of the Philippines a report of operations of the System during the preceding year including statistical data on the number of persons covered and benefited, their occupations and employment status, the duration and amount of benefits paid, the finances of the System at the close of the said year, and recommendations. He shall also cause to be published in two newspapers of general circulation in the Philippines a synopsis of the annual report, showing in particular the status of the finances of the System and the benefits administered.

G. *Miscellaneous Provisions*

SEC. 27. *Penal clause.*—(*a*) Whoever, for the purpose of causing any payment to be made under this Act, or under an agreement thereunder, where none is authorized to be paid, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement, of a material fact in any claim for any benefit payable under this Act, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be fined not less than five hundred pesos nor more than five thousand pesos, or imprisoned for not less than six months nor more than one year, or both, at the discretion of the court.

(*b*) Whoever shall obtain or receive any money or check under this Act or an agreement thereunder, without being entitled thereto, with intent to defraud the System, shall be fined not less than five hundred pesos nor more than five thousand pesos, or imprisoned for not less than six months nor more than one year, or both, at the discretion of the court.

(*c*) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this Act or in regulations made pursuant thereto, any stamp, coupon, ticket, book or other device, prescribed pursuant to section twenty-two hereof by the Commission for the collection or payment of contributions required herein, shall be fined not less than five hundred pesos nor more than five thousand pesos, or imprisoned for not less than six months nor more than one year, or both, at the discretion of the court.

(*d*) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book or other device prescribed by the Commission for the collection or payment of any contribution required herein, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited materials, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp,

coupon, ticket, book, or other device, shall be fined not less than one thousand pesos nor more than ten thousand pesos, or imprisoned for not less than one year nor more than five years, or both, at the discretion of the court.

(*e*) Whoever fails or refuses to comply with the provisions of sections nineteen, twenty, twenty-one and twenty-three of this Act, or with the rules and regulations promulgated by the System, or whoever fails or refuses to pay any of the contributions provided in this Act or to furnish any report or to permit the inspection thereof, shall be punished by a fine of not less than five hundred pesos nor more than five thousand pesos, or imprisonment for not less than six months nor more than one year, or both, at the discretion of the court.

(*f*) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

SEC. 28. *Government aid.*—The establishment of this Social Security System shall not disqualify the covered employees and employers from receiving such government assistance, financial or otherwise, as may be provided.

SEC. 29. *Separability clause.*—In the event any provision of this Act or the application of such provision to any person or circumstance is declared invalid, the remainder of the Act or the application of said provision to other persons or circumstances shall not be affected by such declaration.

SEC. 30. *Saving clause.*—The Congress hereby reserves the right to amend, alter, or repeal any provision of this Act, and no person shall be or shall be deemed to be vested with any property or other right by virtue of the enactment or operation of this Act.

SEC. 31. *Appropriation.*—Out of any funds in the National Treasury not otherwise appropriated, the sum of two hundred thousand pesos, or so much thereof as may be necessary, is authorized to be appropriated for the initial operation expenses of the System.

SEC. 32. *Effectivity.*—This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 930

[REPUBLIC ACT No. 1162]

AN ACT PROVIDING FOR THE EXPROPRIATION OF LANDED ESTATES OR HACIENDAS OR LANDS WHICH FORMED PART THEREOF IN THE CITY OF MANILA, THEIR SUBDIVISION INTO SMALL LOTS, AND THE SALE OF SUCH LOTS AT COST OR THEIR LEASE ON REASONABLE TERMS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The expropriation of landed estates or haciendas in the City of Manila, which have been and are actually being leased to tenants, is hereby authorized.

SEC. 2. Immediately upon the availability of the necessary funds by the Congress of the Philippines for the payment of just compensation for the said landed estates or haciendas, the Solicitor General shall institute the necessary expropriation proceedings before the competent court of the City of Manila.

SEC. 3. The landed estates or haciendas expropriated by virtue of this Act shall be subdivided into small lots, none of which shall exceed one hundred and fifty square meters in area, to be sold at cost to the tenants, or occupants, of said lots, and to other individuals, in the order mentioned: *Provided,* That if the tenant of any given lot is not able to purchase said lot, he shall be given a lease from month to month of said lot until such time that he is able to purchase the same: *Provided, further,* That in the event of lease, the rentals that may be charged by the Government shall not exceed twelve per cent *per annum* of the assessed valuation of the property leased.

SEC. 4. The sale of the lots of the landed estates or haciendas expropriated by virtue of this Act, shall be in installments for a period of not less than ten years.

SEC. 5. From the approval of this Act, and until the expropriation herein provided, no ejectment proceedings shall be instituted or prosecuted against any tenant or occupant of any landed estates or haciendas herein authorized to be expropriated if he pays his current rentals: *Provided, however,* That if any tenant or occupant is in arrears in the payment of rentals or any amounts due in favor of the owners of the said landed estates or haciendas, the amount legally due shall be liquidated and shall be payable in eighteen equal monthly installments from the time of liquidation: *Provided, further,* That the rentals being collected from the tenants of the landed estates or haciendas herein authorized to be expropriated, shall not be increased above the amounts of rentals being charged as of December thirty-one, nineteen hundred and fifty-three, except in cases where there were existing rental contracts for a fixed period which expired on said date: *Provided, furthermore,* That no lot or portion thereof actually occupied by a tenant or occupant shall be sold by the landowner to any other person than such tenant or occupant, unless the latter renounces in a public instrument his rights under this Act: *Provided, finally,* That if there should be tenants who have constructed *bona fide* improvements on the lots leased by them, the rights of these tenants should be recognized in the sale or in the lease of the lots, the limitation as to area in section three notwithstanding.

SEC. 6. Any owner, manager, attorney, agent, or other representative of the owner of the landed estates or haciendas herein authorized to be expropriated who shall violate the provisions of section five hereof, shall be held liable for exemplary damages of treble the amount of actual damages suffered by the prejudiced tenant or occupant, and for attorney's fees and expenses of litigation.

SEC. 7. The property acquired by virtue of this Act may not be sold, transferred, mortgaged, or otherwise disposed of within a period of five years from the date full ownership has been vested in the purchaser without the consent of the Secretary of Agriculture and Natural Resources.

SEC. 8. The amount of fifteen million pesos is hereby authorized to be appropriated for the purposes of this Act: *Provided, however,* That this shall be without prejudice to any other method of raising the necessary funds required for the expropriation herein provided, which the President of the Philippines may determine, including the use of proceeds of government bonds which may be authorized by law.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1228

[REPUBLIC ACT NO. 1163]

AN ACT AMENDING AND REPEALING CERTAIN ITEMS IN REPUBLIC ACT NUMBERED NINE HUNDRED TWENTY, REGARDING PUBLIC WORKS PROJECTS FOR THE PROVINCE OF RIZAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item 44(*z*) for the Province of Rizal, paragraph (*e*), title B, section one of Republic Act Numbered Nine hundred twenty, is amended to read as follows:

"(*z*) Hinulugang Taktak Falls Park, buildings and installations, at Antipolo ..... ₱81,000.00."

SEC. 2. Items 2 (*ag*) and 2 (*ah*) for the Province of Rizal, paragraph (*a*), title H, section one of Republic Act Numbered Nine hundred twenty, are repealed.

SEC. 3. This Act shall take effect as of June twenty, nineteen hundred fifty-three.

Approved, June 18, 1954.

H. No. 2294

[REPUBLIC ACT NO. 1164]

AN ACT TO PROVIDE FOR EMERGENCY ASSISTANCE TO THE GOLD MINING INDUSTRY OF THE PHILIPPINES, TO AUTHORIZE THE APPROPRIATION OF FUNDS THEREFOR, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short title.*—This Act shall be known as "The Emergency Gold Mining Assistance Act of the Philippines."

SEC. 2. *Definition of terms.*—When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

(*a*) "Gold producer" means any person, corporation, partnership or association which produced gold in nineteen hundred and fifty-three whether as principal product or as by-product;

(*b*) "Government" means the Government of the Republic of the Philippines;

(*c*) "Board" means the entity or office created by the President of the Philippines to carry out the provisions of this Act;

(*d*) "Marginal mine" means any mine which makes a total net profit less than what shall be determined as "base profit" for that particular mine;

(*e*) "Base profit" is that profit equal to the quotient of the total remaining capital investment divided by the anticipated remaining lifetime of the ore reserve plus ten per cent; or ten per cent of the gross receipts, whichever is lower;

(*f*) "Sub-marginal mine" means any mine which was in operation at any time during the year nineteen hundred and fifty-three whose cost of production was one hundred twenty-five pesos or more per ounce: *Provided,* That such mine shall cease to be sub-marginal if after six months from the start of operation after the enactment of this Act, its cost of production improves to the level of the marginal mine;

(*g*) "Net profit" means, for purposes of this Act, the gross receipts from the sale of gold bullions minus the total cost of production as defined in this Act;

(*h*) "Anticipated lifetime of a mine" shall be based upon the formula of calculating the total positive ore reserve plus total reasonably probable ore reserve plus total reasonably possible ore reserve as reported by the particular mine and approved by the Board, divided by the annual tonnage extracted;

(*i*) "Total remaining capital investment" includes investment in the mines property, plant and equipment, not yet amortized and/or depleted;

(*j*) "Mines property" includes mining claims, surface rights, shafts, main tunnels, and other capital development;

(*k*) "Plant and equipment" include mill, hoist house, headframe, power house, and other permanent buildings and structures together with all equipment utilized in operation;

(*l*) "Gross receipt" means the gross output of mines or the actual market value of bullion from each mine or mineral lands operated as a separate entity without any deduction for mining, milling, refining, transporting, handling, marketing, or any other expenses;

(*m*) "Cost of production" of bullion from a mine means the cost incurred by the producer and properly attributable to the production of bullion and includes mining, milling, smelting, refining, production tax, domestic marketing expense, transportation, administrative costs which exclude expenses for foreign office and personnel, depreciation and depletion under standardized procedure to be adopted by the Board to be created to carry out the provisions of this Act, and amortization on capital loans;

(*n*) "Direct short term assistance" refers to a direct assistance to sub-marginal mines, to marginal mines, and to mines above the marginal classification, which assistance shall exist for a period of two years from the effective date of this Act;

(*o*) "Newly mined gold" means any gold fresh from the mill which has never been in trade or commerce, certified as such by the gold producer and confirmed by the Board;

(*p*) "Free market" means domestic open market;

(*q*) "Assistance" is the amount given by the Government to gold producers during the effectivity of this Act;

(*r*) "Official price" means the equivalent in Philippine peso of thirty-five dollars United States per ounce of gold or any official price that may be fixed later by the Philippine Government;

(*s*) "Ounce" means troy ounce which is one-twelfth part of a pound of 5,760 grains, or 480 grains or 31.1035 grams;

(*t*) "Refined gold" means gold that has been purified to the fineness acceptable to the Central Bank;

(*u*) "Designated year" means the calendar year nineteen hundred and fifty-three;

(*v*) "Peak year" means any post-war year before nineteen hundred and fifty-four when there was maximum output of gold in ounces in each particular mine;

(*w*) "Mine with gold as principal product" refers to a mine where the receipts from whatever source from the sale of gold is more than fifty per cent of the total receipts;

(*x*) "Mine with gold as by-product" refers to a mine where the receipts from whatever source from the sale of gold is fifty per cent or less of its total receipts.

SEC. 3. *Direct short term assistance.*—To assist the gold producers meet the present emergency, there is hereby created a Direct Short Term Assistance.

SEC. 4. *Mines with gold as principal product.*—Newly mined gold produced as principal product may be sold either to the Government through the Central Bank in the form of refined gold at the current official price per ounce plus the assistance provided in section six hereof or in the domestic free market without benefit of the assistance, at the choice of the gold producer.

SEC. 5. *Mines with gold as by-product.*—In cases of mines in which gold production is a by-product to some other metals they shall not be entitled to an assistance from the Government but are permitted to sell their newly mined gold at the domestic free market.

SEC. 6. *Manner of payment under the Direct Short Term Assistance.*—(*a*) Any marginal gold producer shall be entitled to an assistance from the Government sufficient to bring the total, official price plus assistance, to one hundred eleven pesos and seventy-two centavos per ounce for its production within the effectivity of this Act, not to exceed the production during its post-war peak year: *Provided,* That in case there is excess production, the assistance to be paid on the excess shall be that which will bring the total, official price plus assistance, to one hundred five pesos and forty centavos per ounce.

(*b*) In cases of operating gold mines which are over the marginal classification, such mines shall be given an assistance that will bring the total, official price plus assistance, to one hundred and five pesos and forty centavos per ounce.

(*c*) In cases of gold mines which are sub-marginal, such mines shall be given the same assistance as those given to the marginal gold producer.

SEC. 7. *Term.*—This direct short term assistance shall be effective for a period of two years from the date of approval of this Act.

SEC. 8. *Issuance of receipt.*—During the two-year assistance period as provided in section six hereof, the Central Bank shall issue a receipt indicating the number of ounces of gold so sold and paid for.

SEC. 9. *Board to carry out provisions of this Act.*—The President of the Philippines is hereby authorized to create a Board of five members who shall be appointed by the President of the Philippines with the confirmation of the Commission on Appointments, which Board shall carry out the provisions of this Act and determine the mine or mines that shall be entitled to the benefits hereof.

SEC. 10. *Submittal of quarterly reports.*—Gold producers shall each submit to the Board quarterly reports containing their volume and value of gold production, cost of production as defined in this Act, and such other data and information as may be required by the Board.

SEC. 11. *Examination and inspection.*—The Head of the Board and his duly authorized representatives shall be vested with the authorities and prerogatives of the Director of Mines and his deputies as to inspection of mines property and plants, and examination of books of accounts and records of any gold producer who shall give the necessary facilities for such inspection and examination.

SEC. 12. *Determination of marginal and non-marginal mines.*—The Board shall determine the marginal or non-marginal mines every semester of each calendar year during the effectivity of this Act.

SEC. 13. *Rules and regulations.*—The Board authorized to carry out the provisions of this Act shall promulgate such rules and regulations as may be deemed necessary to implement the provisions of this Act subject to the approval of the corresponding Department head.

SEC. 14. *Fund to carry out the provisions of this Act.*—The Secretary of Finance and the Governor of the Central Bank shall, within thirty days from the approval of this Act and from time to time thereafter, make an estimate of the internal revenue taxes, tax on foreign exchange, customs duties and other charges, payable by gold producers directly or indirectly (except those otherwise allocated by law for other purposes), as well as those arising from allocations of foreign exchange equivalent in value to gold sold to the Central Bank, and such estimates shall be certified by said officials. Upon such certification, the Central Bank of the Philippines is authorized to charge the current account of the National Treasury in said Bank in an amount equivalent to such certification and the amount so charged shall be set aside in a trust fund to be known as "Emergency Gold Assistance Trust Fund", which is hereby appropriated to be disbursed exclusively for the purpose of carrying out the provisions of this

SEC. 15. *Duties and functions of the Board.*—The Board shall be the administrative office to carry out and implement the provisions of this Act and shall have, among others, the following functions and duties:

(*a*) To undertake the payment of the assistance as herein provided to gold producers selling newly mined gold to the Central Bank;

(*b*) To determine the gold producer that may qualify to receive assistance under the provisions of this Act;

(*c*) To study and work out a long term assistance plan to help the gold mining industry;

(*d*) To make inspection of mine properties and plants and to examine books and records of the gold producers; and

(*e*) To do such other acts as may be necessary to carry out and implement the provisions of this Act.

SEC. 16. *Penal provisions.*—All statements representations, or reports required under this Act shall be under oath, and any person, making knowingly any false statement, representation or report under oath shall be subject to punishment for perjury under the provisions of the Revised Penal Code, upon conviction therefor by a competent court.

SEC. 17. Any mining company that takes advantage of the benefit of this Act shall not use the assistance herein provided for purposes of increasing salaries of personnel receiving compensation in excess of two thousand four hundred pesos annually.

SEC. 18. All acts or parts thereof which are inconsistent with any provision of this Act are hereby repealed.

SEC. 19. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 2507

[REPUBLIC ACT NO. 1165]

AN ACT AUTHORIZING THE CITY OF MANILA TO ISSUE BONDS FOR THE PAYMENT OF REAL ESTATE TO BE EXPROPRIATED FOR THE WIDENING OF ALL STREETS IN INTRAMUROS, AND AUTHORIZING ALSO A NATIONAL GOVERNMENT BOND ISSUE SECURED BY SAID CITY BONDS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The government of the City of Manila is authorized to negotiate a loan in the sum of three million pesos to be used for the payment of real estate to be expropriated for the widening of all city streets in Intramuros. At the request and by virtue of an ordinance duly approved by the Municipal Board of Manila, and on the recommendation of the Secretary of Finance, the necessary bonds for said loan shall be issued by the President of the Philippines, who is authorized to issue the same in the name and behalf of said city. The bonds so authorized shall be issued in convenient denominations, in registered form, and shall be registered and transferable and payable in the Central Bank of the Philippines in Manila. They shall have the same date, bear interest at the same rate which shall not exceed six *per centum per annum,* and be payable at the same time as the bonds of the Republic of the Philippines authorized to be issued in section three of this Act. Said bonds shall be issued to owners of real estate expropriated by the government of said city for the widening of streets in Intramuros. Matured bonds may be discounted by the holders thereof in payment of real estate taxes for properties in the City of Manila.

SEC. 2. The President of the Philippines is further authorized to convey and transfer said bonds to the Republic of the Philippines for a consideration, charging the same to the net proceeds of the sale of bonds of the Republic of the Philippines issued in an equivalent amount, as provided in section three of this Act, and to deposit the proceeds of said conveyance with the Central Bank of the Philippines. The proceeds of the conveyance to the National Government of said bonds shall be credited by the Central Bank of the Philippines to the Expropriation Bond Fund, City of Manila and be withdrawn only for the purpose set forth in this Act, by order of the Secretary of Finance.

SEC. 3. The President of the Philippines is authorized to issue in the name and behalf of the Republic of the Philippines, bonds to the amount of three million pesos for a term of ten years payable in ten annual equal installments from the date of issuance thereof, secured by the bonds of the City of Manila herein authorized and conveyed and transferred to the National Government as provided in sections one and two of this Act. The President of the Philippines shall determine the form of the National Government bonds, the date of issue thereof, and the rates and dates of payment of the interest thereon, which rate shall not be in excess of six *per centum per annum*. The National Government bonds may be coupon bonds or registered bonds, in the discretion of the President of the Philippines, and shall be registered in the Central Bank of the Philippines, where the principal and interest shall be payable in Philippine or its equivalent in United States currency, in the discretion of the Secretary of Finance. The President of the Philippines is further authorized to sell said National Government bonds in the Philippines, only at public auction through the Central Bank of the Philippines, upon such terms and conditions as in his judgment are most favorable to the Republic of the Philippines, and he shall deposit the proceeds of the sale thereof with the Central Bank of the Philippines, to the credit of the National Government.

SEC. 4. The proceeds of the sale of the National Government bonds authorized to be issued by this Act are hereby appropriated for the payment of the bonds issued by the City of Manila and conveyed and transferred as security for the National Government bonds above-mentioned, in accordance with sections one and two of this Act.

SEC. 5. The National Government and city bonds hereby authorized to be issued shall be exempt from taxation by the Republic of the Philippines or of any political or municipal subdivision thereof.

SEC. 6. A sinking fund shall be established in such manner that the total annual contributions thereto, accrued as at such rate of interest as may be determined by the Secretary of Finance in consultation with the Monetary Board, shall be sufficient to redeem at maturity the bonds issued under this Act. Said fund shall be under the custody of the Central Bank of the Philippines which shall invest the same in such manner as the Monetary Board may approve; shall charge all expenses of such investment to said sinking fund; and shall credit the same with the

interest on investments and other income belonging to it.

SEC. 7. A standing annual appropriation is hereby made out of any general fund in the National Treasury of such sum as may be necessary to provide for the sinking fund created in the next preceding section and for the interest on bonds issued by virtue of this Act. A further appropriation is hereby made out of the same funds in the National Treasury not otherwise appropriated of a sufficient sum to cover the expenses of the issue and sale of the bonds authorized by this Act.

SEC. 8. The Secretary of Finance, or the Central Bank of the Philippines acting as his agent, may purchase such materials and equipment and may order the printing, engraving, advertising, soliciting, shipping, or the rendering of any other services which he considers to be necessary to the successful issuance, placement, sale, servicing, redemption, or payment of the bonds issued under the authority of this Act.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 18, 1954.

S. No. 37

[REPUBLIC ACT NO. 1166]

AN ACT TO DECLARE THE PRIVILEGE TAXES ON PROFESSIONS AS NOW IMPOSED BY LAW SUFFICIENT FOR THE PRACTICE OF THE PROFESSIONS IN ANY PART OF THE PHILIPPINES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any provisions of existing laws, city charters and ordinances, executive orders, rules and regulations or parts thereof, to the contrary notwithstanding, every professional legally authorized to practice his profession, who has paid the corresponding annual privilege tax on professions required by Section two hundred and one of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Forty-two, shall be entitled to practice the profession for which he has been duly qualified under the law, in all parts of the Philippines without being subject to any other tax, charge, license or fee for the practice of such profession: *Provided, however,* That they have paid to the office concerned the registration fees required in their respective professions.

SEC. 2. This Act shall take effect on July 1, 1955.

Approved, June 18, 1954.

S. No. 49

[REPUBLIC ACT NO. 1167]

AN ACT PUNISHING OBSTRUCTION AND/OR INTERFERENCE WITH PEACEFUL PICKETING DURING ANY LABOR CONTROVERSY.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any person who shall willfully obstruct or interfere with peaceful picketing by workers and/or em-

ployees during any labor controversy or who shall knowingly aid or abet such obstruction or interference, in a manner not otherwise provided by existing law, shall upon conviction thereof, be punished with a fine of not more than five thousand pesos or imprisonment for not more than two years, or both such fine and imprisonment in the discretion of the Court.

If the person who violates the provisions of this Act is a peace officer, he shall be punished by a fine not exceeding ten thousand pesos or imprisonment not exceeding five years, or both such fine and imprisonment in the discretion of the Court.

SEC. 2. Any act or part of acts, rules and regulations or executive orders inconsistent with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 18, 1954.

S. No. 54
H. No. 507

[REPUBLIC ACT NO. 1168]

AN ACT TO PROVIDE FOR THE FIXING, UNDER CERTAIN CONDITIONS, OF THE MAXIMUM SELLING PRICES OF COMMODITIES IN SHORT SUPPLY, CREATING THE PRICE CONTROL OFFICE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It is the policy of this Act to prevent locally or generally, scarcity, monopolization, hoarding, speculation, manipulation and profiteering affecting the supply, distribution and movement of both imported and locally manufactured or produced rice, corn, flour, canned fish (sardines, squid, mackerel, herring, salmon), coffee, canned milk, canned meat (corned beef, Vienna sausage, meat spread), fresh and frozen meat, textbooks, paper and paper products and other materials used for printing of newspapers, magazines and textbooks, antibiotics and other essential drugs, essential surgical, essential dental materials, and textiles (blue denim, khaki, cotton piece goods with thread counts of from 60/48 or 110 per square inch to 80/80 or 165 per square inch).

SEC. 2. To carry out the above policy, there is hereby created in the Price Stabilization Corporation, otherwise known as the PRISCO, a Price Control Office which shall be charged with the enforcement of this Act and of the orders, rules and regulations issued hereunder, under the control and supervision of the General Manager of the PRISCO, subject to such rules and regulations as the Board of Directors may prescribe. The Chief of the Price Control Office shall receive a compensation of seven thousand two hundred pesos per annum and shall be appointed by the General Manager of the PRISCO with the approval of the Board of Directors. The other officials and personnel of the said office shall be appointed also and their compensation fixed by the General Manager of the PRISCO with the approval of the Board of Directors.

SEC. 3. Unless otherwise modified as provided in this Act, the maximum prices of the goods or commodities

mentioned in section one hereof shall be the maximum prices prevailing on December thirty-one, nineteen hundred and fifty-three, as fixed under and by virtue of the provisions of Republic Act Numbered Five hundred nine, as amended by Republic Act Numbered Seven hundred twenty-nine.

SEC. 4. Whenever the market price of any of the goods or commodities mentioned in section one hereof has risen or threatens to rise beyond the prevailing controlled price or when the circumstances clearly justify a reduction in the prevailing controlled price, the President of the Philippines, upon the recommendation of the General Manager and the Board of Directors of the PRISCO, shall establish, by regulation or order, such maximum as shall be generally fair, just, and reasonable, and he may promulgate such rules and regulations as may be deemed necessary to effectuate the purposes of this Act.

In determining such maximum prices, the following factors shall be taken into account:

(*a*) The average prevailing price of any commodity under consideration during the preceding quarter of the year;

(*b*) The estimated supply available in the market;

(*c*) The cost of production of the commodity, if produced locally, or its landed cost, if imported;

(*d*) The cost of distribution which shall include the cost of transportation, storing and selling of the commodity;

(*e*) The reasonable margin of profit which should be allowed to ensure a continuous supply of the commodity.

The General Manager shall make use of the index numbers of prices, production, and importation of the prime commodities mentioned in section one hereof prepared and issued by the Central Bank, and if said index numbers are not adequate, the General Manager may request that additional index numbers be prepared by the Central Bank as may be needed for the determination of the maximum price of any commodity enumerated in section one hereof.

The rules, regulations or orders promulgated by the President shall take effect within fifteen days after their publication in a newspaper of general circulation in the Philippines.

SEC. 5. In order to facilitate the determination of the maximum selling price of any commodity and for the purpose of enforcing the provisions of this Act, the Price Control Office, directly or through such agencies, officials and employees of the government it may deputize, shall have the powers: (*a*) to examine bills of lading, bills of sales, invoices, books, records and other pertinent documents owned or in the possession of any importer, producer, manufacturer, wholesaler or retailer, and for this purpose they may, by *subpoena* or *subpoena duces tecum,* require any person to appear and testify or to appear and produce books, records and other documents, or both; and (*b*) upon the issuance of a search warrant, by a competent court, to inspect premises, bodegas or storerooms where stocks of controlled commodities or the documents and papers above referred to are kept; and in the case of contumacy by, or refusal to obey a *subpoena* or *subpoena duces tecum* issued to any such person, the municipal court

or the justice of the peace court of the city or municipality in which such importer, wholesaler, retailer, manufacturer or producer is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court shall be punished by such court as contempt thereof, with a fine of not more than six hundred pesos or imprisonment of not more than six months, or both.

SEC. 6. Within thirty days after the approval of this Act, all importers, manufacturers or producers, wholesalers, and retailers of the commodities mentioned in section one hereof shall file with the Price Control Office or its duly authorized representative a complete and true inventory of their stock under oath. Thereafter, all expected shipments of such commodities by importers, shall be declared under oath to the Price Control Office or its duly authorized representative within five days after receipt of the corresponding bills of lading and other shipping documents. All merchandise reported as required in this Act shall be deemed offered for sale.

Importers, manufacturers or producers and wholesalers of commodities of the categories mentioned in section one hereof the price of which has been placed under control shall transmit to the Price Control Office or its authorized representative a monthly report of their sales under oath.

SEC. 7. All persons engaged in the retail sale of the commodities mentioned in section one hereof the price of which has been placed under control shall post in a conspicuous place in their establishment, or store or stall a list of all such commodities displayed and offered for sale with their corresponding prices, and, in addition, shall attach to said merchandise price tags in such manner as to be within the plain view of the public. No person engaged in the retail trade shall refuse to sell any such merchandise.

SEC. 8. Whenever any of the commodities included in section one hereof is in short supply, or whenever there exists reasonable ground to believe that it will disappear in the open market, or whenever there is an uncontrolled inflation of prices, the PRISCO may, with the approval of the President, import directly such commodity for distribution in the local market through such channels as it may choose.

SEC. 9. Imprisonment for a period of not less than two months nor more than five years or a fine of not less than two hundred pesos nor more than five thousand pesos, or both, shall be imposed upon any person who sells any commodity in excess of the maximum selling price; or who hoards or keeps commodities mentioned in section one hereof in excess of the quantities reported by him; or who refuses to sell any merchandise which he keeps either as a wholesaler or retailer in his establishment, store or stall, whether displayed or not; or who, having in stock merchandise the price of which is under control shall transfer the same or make a false or fictitious sale of all or any portion thereof so as to defeat the purpose of this Act; or who fails or refuses to file with the manager of the PRISCO an inventory of his stock and/or to transmit

copies of bills of lading or bills of sale, or who violates any provision of this Act or any order, rule or regulation issued pursuant to the provisions of this Act: *Provided, however,* That in the case of aliens, in addition to the penalty herein provided, the offender shall be upon final conviction, subject to immediate deportation without the necessity of any further proceedings on the part of the Deportation Board.

In the case of corporations, partnerships or associations, the President, managing director or manager shall be held liable under this section.

In addition to the penalties prescribed above, the persons, corporations, partnerships, or associations found guilty of any violation of this Act or of any rules or regulations issued by the General Manager pursuant to this Act shall be barred from the wholesale and retail business for a period of five years for a first offense, and shall be permanently barred for the second or succeeding offenses.

Any government officer or employee, who, by neglect or connivance, has enabled an importer, wholesaler, retailer or any person who has commodities in his control or possession, to hide or transfer his stock or has in any manner aided or abetted in the violation or circumvention of the provisions of this Act shall be held criminally liable as co-principal under this section and shall, in addition, suffer the penalty of perpetual absolute disqualification to hold public office. Any government officer or employee who, being duly authorized by the Price Control Office to act as its authorized agent, shall divulge to any person, or make known in any other manner than may be authorized by law, any information regarding the income, method of operation or other confidential information regarding the business of any person, association or corporation, knowledge of which was acquired by him in the course of the discharge of his official duties, shall be punished by both a fine of not less than two hundred pesos nor more than five thousand pesos and imprisonment of not less than two years nor more than five years.

SEC. 10. All officers, agents, employees, agencies and instrumentalities of the Government, when so required by the Price Control Office, shall act as its deputies and agents without extra compensation in carrying out and enforcing the provisions of this Act.

SEC. 11. If any provision of this Act or the applicability of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this Act and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 12. The sum of two hundred thousand pesos, or so much thereof as may be necessary, is hereby appropriated out of any funds in the National Treasury not otherwise appropriated exclusively to enable the Price Control Office to carry out the provisions of this Act.

SEC. 13. This Act shall take effect upon its approval and shall continue in force until the fifteenth of February, nineteen hundred and fifty-five: *Provided, however,* That convictions rendered under this Act or under the duly promulgated orders, rules, and regulations issued pursuant thereto shall remain valid and enforceable, and prosecutions

of offenses committed during the effectivity thereof shall continue and shall not be barred until terminated by conviction or acquittal of the accused.

Approved, June 18, 1954.

H. No. 1305

[REPUBLIC ACT NO. 1169]

AN ACT PROVIDING FOR CHARITY SWEEPSTAKES HORSE RACES AND LOTTERIES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *The Philippine Charity Sweepstakes Office.*—The Philippine Charity Sweepstakes Office hereinafter designated the Office, shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine. It shall have a Board of Directors, hereinafter designated the Board, composed of five members who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and whose compensation and term of office shall be fixed by the President.

SEC. 2. *General Manager and personnel.*—The General Manager shall have the direction and control of the Office in all matters which are not specifically reserved for action by the Board. Subject to the approval of the Board of Directors, he shall also appoint the personnel of the Office, except the Auditor and the personnel of the Office of the Auditor who shall be appointed by the Auditor General.

SEC. 3. *Operating expenses.*—The operating expenses of the Office shall be paid from its receipts.

SEC. 4. *Holding of sweepstakes.*—The Office shall hold charity horse race sweepstakes under such regulations as shall be promulgated by the Board in accordance with Republic Act Numbered Three hundred and nine: *Provided, however,* That when the holding of a sweepstakes race to determine prizes is impossible due to war, public calamity, or other unforeseen or fortuitous event, or when there is no sufficient number of horses to determine the major prizes, the Board of Directors may determine the procedure to be followed in the distribution of prizes in the most just, equitable and expeditious manner. The horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp and that from the total prize fund as provided herein from the proceeds of the sale of tickets there shall be deducted an amount equivalent to one and one-half *per centum* of such total prize fund, which shall be paid to the Bureau of Internal Revenue not later than ten days after each sweepstakes in lieu of the income tax heretofore collected from sweepstakes prize winners: *Provided, however,* That any prizes that may be paid out from the resulting prize fund, after said one and one-half *per centum* has been deducted, shall be exempt from income tax. The tickets shall be printed by the Government and shall be considered government securities for the purpose of penalizing forgery or alteration.

SEC. 5. *Races entries.*—The races to be held under this Act shall be of five kinds: (*a*) those for horses of less than fifty-four inches in height; (*b*) those for horses of fifty-four inches or more but less than fifty-six inches in height; (*c*) those for horses of fifty-six inches or more but less than fifty-eight inches in height; (*d*) those for horses of fifty-eight inches or more but less than sixty inches in height; and (*e*) those for horses of sixty inches or more in height. Only native horses may participate in any sweepstakes race. A horse intended for races under this Act shall be registered, within thirty days after its birth, with the treasurer of the municipality in the Philippines where it was born. Another registration with the same office should be made within one year after its birth wherein all identification data, such as brand, sex, color and cowlicks shall be stated. Three years after this Act takes effect no horse shall be allowed to participate in any race under this Act unless so registered.

Only horses that have not run for a prize previously in any race in the Philippines may participate in any sweepstakes race under this Act. All horses participating in any sweepstakes race shall be registered with the Philippine Charity Sweepstakes Office at least thirty days before the holding of the race. No horse owner shall be permitted to register more than one entry that may participate in any sweepstakes race.

SEC. 6. *Disposal of gross receipts.*—The gross receipts from the sale of tickets for the races held under this Act shall be disposed of as follows:

(*a*) Ten *per centum* shall be applied to the payment of the operating expenses of the Office. After deducting said expenses and a reserve fund has been set aside which shall in no case exceed one million pesos at any given time for the purchase of real estate and machineries for its own use; and/or for improvement of the same and/or to meet future losses and contingent liabilities, the balance remaining plus the proceeds from the races after deducting the expenses of the draw and races in sweepstakes day shall be added to the portion disposed of under paragraph (*c*) hereof.

(*b*) Fifty-eight and one-half *per centum* shall be applied to the payment of the prizes, including those for the owners and jockeys of the winning horses. Each of the three main prizes for horses shall be ten *per centum* of each of the three main prizes for winning tickets, respectively.

(*c*) Six and one-half *per centum* shall be allotted to the provinces and cities in the Philippines, excepting the City of Manila, in proportion to the collections therein made and under such rules and regulations as the Board of Directors may prescribe, the amounts so allotted to be expended by the corresponding provincial and city governments for the maintenance of provincial, city and municipal hospitals, and for other health, social welfare, and charitable work in their respective jurisdiction.

(*d*) The remaining twenty-five *per centum* together with the receipts for the holding of the sweepstakes races and the proceeds realized from the holding of lotteries as hereinafter provided, shall be apportioned, except as otherwise provided herein, by the Board of Directors, with the approval of the President of the Philippines and shall

be paid over by said Board among and to institutions or organizations engaged in charitable, relief, and health work or work for the improvement of the conditions of the indigent Filipino masses in this country or abroad. No aid from the proceeds of the sweepstakes herein authorized shall be given to any charitable organization not granted a special charter by law, unless it shall have first complied with the rules and regulations issued by the Board of Directors, approved by the President of the Philippines, governing the disposition of the sweepstakes fund and unless provision is contained in its by-laws, to the effect that any property acquired or which it may acquire from the funds given to it under this Act shall not be sold or otherwise disposed of without the approval of the President of the Philippines, and that in the event of its dissolution all such properties shall be transferred to and shall automatically become the property of the Philippine Government.

The funds given to any institution by virtue of this section shall be used for no other purpose than those authorized by the Board of Directors.

SEC. 7. *Annual report of the Board.*—The Board shall submit, during the month of July of each year, a report to the President of the Philippines and to both Houses of Congress on the activities of the Office.

SEC. 8. *Acts penalized.*—The following shall be punished by imprisonment for not less than one month and not more than three years:

(*a*) Any person who, without being a duly authorized agent of the Office, sells tickets of the Office, or, being such agent, sells tickets, fractions or coupons thereof not issued by the Office, representing or tending to represent an interest in tickets issued by the Office.

(*b*) Any person who sells tickets issued by the Office at a price greater than the price stated on the ticket.

(*c*) Any officer or employee of a hospital or other charitable or hygienic institution or organization who uses funds obtained from the Office under this Act for purposes other than those herein authorized.

SEC. 9. Once a month during the months when there are no sweepstakes draws and races, the Philippine Charity Sweepstakes Office is authorized to hold lotteries.

SEC. 10. The Board of Directors of the Sweepstakes, with the approval of the President of the Philippines, shall promulgate rules and regulations for the holding of lotteries; shall fix the number and price of the tickets for the same and the number of tickets usually given *gratis* to the ticket vendors; fix the number and amount of the prizes; fix the date when the sale of tickets shall close; and designate the dates and place or places where such lotteries shall be held.

SEC. 11. *Laws affected.*—Act Numbered Four thousand one hundred thirty, as amended by Commonwealth Acts Numbered Three hundred one and Five hundred forty-six and by Republic Acts Numbered Seventy-two and Five hundred seventy-four, and all other Acts or parts thereof, except Commonwealth Act Numbered Five hundred ninety-five and Republic Act Numbered Six hundred twenty, inconsistent with the provisions of this Act, are hereby repealed.

SEC. 12. *Date of effectivity.*—This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 530

[REPUBLIC ACT NO. 1170]

AN ACT CHANGING THE NAME OF THE SAN JOSE NO. 2 ELEMENTARY SCHOOL IN THE MUNICIPALITY OF NAUJAN, PROVINCE OF ORIENTAL MINDORO, TO FRANCISCO MELGAR MEMORIAL SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the San Jose No. 2 Elementary School in the municipality of Naujan, Province of Oriental Mindoro, is changed to Francisco Melgar Memorial School.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 635
S. No. 127

[REPUBLIC ACT NO. 1171]

AN ACT TO PROVIDE THE VENUE OF ACTION ON CLAIMS OF EMPLOYEES, LABORERS AND OTHER HELPS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any provision of law or the Rules of Court to the contrary notwithstanding, civil actions on claims of employees, laborers and other helps may be commenced and tried in the court of competent jurisdiction where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1681
S. No. 106

[REPUBLIC ACT NO. 1172]

AN ACT TO AMEND SECTION ONE HUNDRED SEVEN OF COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-ONE, ENTITLED "THE PUBLIC LAND ACT".

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one hundred seven of Commonwealth Act Numbered One hundred forty-one is hereby amended to read as follows:

"SEC. 107. All patents or certificates for land granted under this Act shall be prepared in the Bureau of Lands and shall be issued in the name of the Government of the Republic of the Philippines under the signature of the President of the Philippines: *Provided, however,* That the

President of the Philippines may delegate to the Undersecretary of Agriculture and Natural Resources the power to sign patents or certificates covering lands not exceeding one hundred forty-four hectares in area, and to the Secretary of Agriculture and Natural Resources the power to sign patents or certificates covering lands exceeding one hundred forty-four hectares in area. Such patents or certificates shall be effective only for the purposes defined in section one hundred and twenty-two of the Land Registration Act, and actual conveyance of the land shall be effected only as provided in said section."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1791

[REPUBLIC ACT NO. 1173]

AN ACT TO AMEND SECTION ELEVEN HUNDRED FIFTY-ONE OF THE ADMINISTRATIVE CODE, AS AMENDED, BY ADDING DUMAGUETE CITY AS PORT OF ENTRY, AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section eleven hundred fifty-one of the Administrative Code, as amended by Republic Act Numbered Seven hundred twenty-one, is further amended to read as follows:

SEC. 1151. *Collection districts and ports of entry thereof.*—For administrative purposes, the Philippines shall be divided into eighteen collection districts, the respective limits of which may be changed from time to time in the discretion of the Insular Collector of Customs, but the Province of Pangasinan shall belong to the district of Pangasinan, with Sual as its port of entry, and the Province of Quezon to the district of Quezon, with Hondagua as its port of entry. The principal ports of entry for the respective collection districts shall be Manila, Sual, Tabaco, Cebu, Pulupandan, Hondagua, Iloilo, Davao, Legaspi, Zamboanga, Jolo, Aparri, Jose Panganiban, Cagayan, Tacloban, San Fernando, Hinigaran, and Dumaguete City."

SEC. 2. The sum of two hundred fifty thousand pesos is authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment and operation of the customs service at the port of Dumaguete City.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1849
S. No. 75

[REPUBLIC ACT NO. 1174]

AN ACT TO AMEND CERTAIN SECTIONS OF EXECUTIVE ORDER NUMBERED THREE HUNDRED NINETY-THREE, OTHERWISE KNOWN AS THE CHARTER OF THE CENTRAL LUZON AGRICULTURAL COLLEGE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Executive Order Numbered Three hundred ninety-three, commonly known as the Charter of the Central Luzon Agricultural College, is hereby amended to read as follows:

"SECTION 1. The present Central Luzon Agricultural School, located in Muñoz, Nueva Ecija, Philippines, is hereby converted into the Central Luzon Agricultural College, which will offer not only its present four-year secondary agricultural course, one-year farm mechanics course, and special courses but also a two-year course leading to the title of Associate in Agricultural Education, four-year courses leading to the degrees of Bachelor of Science in Agricultural Education, Bachelor of Science in Agricultural Engineering, and Bachelor of Science in Home Economics; and post graduate courses leading to the degrees of Master of Science in Agricultural Education, Master of Science in Agricultural Engineering, and Master of Science in Home Economics; and such other degree courses and special courses as the Board of Trustees may deem necessary."

SEC. 2. Section two of Executive Order Numbered Three hundred and ninety-three is hereby amended to read as follows:

"SEC. 2. The aim of the said College shall be to provide professional, technical, and special instruction, for special purposes, promote research, extension service, and progressive leadership in agricultural education, agricultural engineering, home economics, and other fields."

SEC. 3. Subsection (*b*) of section five of the same Executive Order Numbered Three hundred and ninety-three is hereby amended to read as follows:

"(*b*) To confer upon successful candidates for graduation, the title of Associate in Agricultural Education, the degrees of Bachelor of Science in Agricultural Education, Bachelor of Science in Agricultural Engineering, Bachelor of Science in Home Economics, Master of Science in Agricultural Education, Master of Science in Agricultural Engineering, and Master of Science in Home Economics, and such other titles and degrees corresponding to the courses which the Board of Trustees may offer: *Provided,* That it may confer the usual honorary degrees upon persons in recognition of learning, statesmanship, leadership, or eminence in literature, science, art, agriculture, or public service."

SEC. 4. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1862

[REPUBLIC ACT NO. 1175]

AN ACT AMENDING SECTIONS ONE AND TWO OF REPUBLIC ACT NUMBERED SIX HUNDRED ONE, AS AMENDED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections one and two of Republic Act Numbered Six hundred one, as amended, are further amended to read as follows:

"SECTION 1. Except as herein otherwise provided, there shall be assessed, collected, and paid a special excise tax of seventeen *per centum* on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines or any of its agents until June thirtieth, nineteen hundred and fifty-five.

"SEC. 2. The tax provided for in section one of this Act shall not be collected on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation into the Philippines of canned milk, canned beef, canned fish, chocolate, malt, stabilizer and flavors, vitamin concentrate; supplies and equipment purchased directly by the Government or any of its instrumentalities for its own exclusive use; machinery, equipment, accessories, and spare parts, for the use of industries, miners, mining enterprises, planters and farmers; and fertilizers when imported by planters or farmers directly or through their cooperatives; articles or containers used, including materials for the manufacture of tin containers used by the importer himself in the manufacture or preparation of local products for consignment or export abroad; textbooks, reference books, and supplementary readers approved by the Board on Textbooks and/or established public or private educational institutions; paper imported by publishers for their exclusive use in the publication of books, pamphlets, magazines and newspapers; carbides, explosives and dynamite for mining purposes; drugs and medicines, and medical and hospital supplies listed in the appendix of this Act; payment in respect of reinsurance; payment in respect of marine and aviation insurance; spare parts to be used in the repair of vessels of Philippine registry or airplanes and such other parts thereof as may be certified by the Hulls and Boilers Division of the Bureau of Customs or the Civil Aeronautics Administration, respectively, as essential to the maintenance of vessels or airplanes; payment of purchase price of vessels or ships of any kind or nature intended for Philippine registry, ninety per cent of the ownership of which belongs exclusively to Filipinos, or charter fees of airplanes and vessels of Philippine register; remittances for payment of principal and interests of foreign loan contracted under obligation of the Philippine Government or any of its instrumentalities; payment of premiums by veterans on life insurance policies under the Government of the United States, and payment of premiums and other amounts due by policyholders on life insurance policies issued before December nine, nineteen hundred and forty-nine, and payment of machinery and/or raw materials to be used by new and necessary industries as determined in accordance with Republic Act Numbered Thirty-five."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 18, 1954.

APPENDIX

DRUGS AND MEDICINES

1. Adrenalin (Epinephrine) Chloride and preparations
2. Aluminum Hydroxide preparations
3. Amebacides except emetine preparations

4. Amino Acid preparations, solutions, parenteral
5. Antihelmintic preparations except calomel, santonin
6. Antihistaminic preparations
7. Antihypertension and vasodilator agents
8. Anti-Leprosy preparations
9. Antimalarials except quinine preparations
10. Antipyretics not manufactured locally
11. Antisyphilitic preparations
12. Antitetanic serum
13. Aureomycin preparations
14. B-Complex Capsules
15. Barbiturates and their preparations
16. Blood testing serums and solutions
17. Cardiac stimulants except aminophylline preparations
18. Castor Oil
19. Cathartic Pills Compound
20. Chenopodium Oil
21. Chlorazene Tablets and similar preparations
22. Chloromycetin preparations
23. Coagulants
24. Cortisone Acetate preparations
25. Curare products and similar preparations
26. Diagnostic Reagents
27. Digitalin and other digitalis preparations
28. Diphtheria Antitoxin and other immunological preparations
29. Diphtheria Toxoid
30. Discoids of Hydrocyanic Acid (HCN) for fumigation work
31. Drugs (crude or otherwise), chemicals (simple or compound) for pharmaceutical manufacture and chemicals to be used for the eradication of plant insects and pests
32. Drugs and medicines for the use of the dental and veterinary professions
33. Ergot preparations and derivatives
34. Ferrous Sulphate preparations
35. Gas Gangrene Antitoxin
36. Gland products and synthetic substitutes
37. Heparin derivatives
38. Homogenized Baby Foods (vegetables, fruits and meats)
39. Hormone preparations
40. Hydrogen Peroxide preparations
41. HTH—Commercial
42. Insulin preparations, all forms
43. Laboratory Stains
44. Liquor Cresolis Compositus and other disinfectants
45. Liver Extract preparations
46. Magnesium Hydroxide preparations
47. Magnesium Trisilicate compounds
48. Mercurial Diuretics
49. Mercurochrome, crystals
50. Merthiolate preparations
51. Multivitamin Capsules
52. Neomycin and preparations
53. Novocain and other anaesthetics for general, spinal, intravenous, local or dental use
54. Opium, its alkaloids and their salts, its derivatives, their preparations and synthetic substitutes
55. Pancreatic extracts preparations
56. Plasma
57. Pregnenolon Acetate and preparations
58. Protein Solutions, powders and compounds

59. Quarternary Ammonium compounds and other fungicidal agents
60. Saccharine preparations and substitutes
61. Salt Substitutes
62. Similac, Klim, Lactogen and other dehydrated powdered milk
63. Sulphur
64. Terramycin and preparations
65. Tuberculin Tablets PPD, 1st and 2nd Tests
66. Vitamin preparations not manufactured locally in sufficient quantities
67. Drugs specialties not manufactured locally
68. Anti-biotics (bulk)
69. Tetracyn and preparations
70. Achromycin and preparations
71. Cyanide for mining purposes

MEDICAL AND HOSPITAL SUPPLIES

1. Applicators, wood
2. Bandage, gauze
3. Bandage, specialists, Plaster of Paris
4. Cotton, Absorbent
5. Dental instruments and supplies
6. Diagnostic instruments
7. Droppers, medicine
8. Electro Medical equipment
9. Gauze, plain
10. Gauze, sponges
11. Jelly, lubricating, plain or anaesthetics
12. Major Operating table (not examining table)
13. Needles, hypo, all sizes
14. Operating lights
15. Optometric instruments and supplies
16. Pads, obstetrical
17. Plasters, adhesive, all sizes
18. Sterilizers, autoclaves
19. Surgical instruments
20. Surgical, crinoline
21. Sutures, all kinds and sizes
22. Syringes, hypo, all sizes
23. X-Ray films, developers and fixers
24. X-Ray equipment and supplies
25. Radium for therapy

S. No. 111
H. No. 1870

[REPUBLIC ACT NO. 1176]

AN ACT AUTHORIZING THE ZONIFICATION OF ABACA AREAS, ACTUAL AND POTENTIAL, AND PRESCRIBING CERTAIN PLANTING RESTRICTIONS AND OTHER MEASURES FOR THE CONTROL OF ABACA MOSAIC DISEASE TO PROTECT THE ABACA INDUSTRY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It shall be the declared policy of Congress to promote the development of the abaca industry by the adoption of adequate measures for the control of abaca mosaic disease which threatens the very existence of the industry, particularly in Davao and Cotabato. Towards

this end, and in recognition of the fact established through scientific investigations that the mosaic disease is caused by a virus which is transmitted by aphids and plant lice from diseased to healthy abaca plants through intermediate host plants, the most important of which is corn, and that where corn is interplanted with abaca or planted close to abaca plantations the rate of infection is rapid and the extent of infection is heavy and widespread, the Secretary of Agriculture and Natural Resources, with the approval of the President of the Philippines, is hereby authorized to zonify areas actually planted to abaca and potential abaca areas into abaca zone and non-abaca zone, with a buffer zone around an abaca zone or between an abaca and a non-abaca zone, in order to enforce more effectively measures herein provided for the control of abaca mosaic disease.

SEC. 2. In the exercise of the above-mentioned authority, the following guiding principles shall be observed:

(*a*) "Potential abaca area" shall mean any sizeable block of public land released after the promulgation of this Act by the Bureau of Forestry for agricultural purposes and suitable to the planting of, but not yet actually planted to abaca. In the zonification of potential abaca areas, natural boundaries shall be availed of as much as feasible.

(*b*) An "abaca area" shall mean any sizeable block of cultivated land already utilized for the growing of abaca to the extent of sixty per cent or more. The zonification of abaca areas into abaca zones and non-abaca zones shall be done on the basis of the degree of mosaic infection, as the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Plant Industry shall determine.

(*c*) A "buffer zone" shall not be less than five hundred meters wide and, if located between a declared abaca zone and a non-abaca zone within areas planted to abaca, shall be taken from the non-abaca zone.

SEC. 3. The planting of corn within declared abaca zones is prohibited, provided that if on the date the area is declared an abaca zone becomes effective there is a corn crop standing, the crop may be allowed to reach maturity and be harvested.

SEC. 4. The planting of both corn and abaca within the buffer zones is prohibited, provided that the owners of standing corn or abaca at the time the zoning takes effect shall have six months from said date within which to clear their land of corn and two years within which to clear it of abaca.

SEC. 5. Within declared abaca zones, the owners of abaca plantations are given two years from the date this zonification takes effect to destroy completely by burning, use of chemicals or other methods approved by the Bureau of Plant Industry, all mosaic-infected plants and thereafter to keep their plantations free from infection by promptly destroying every plant that shows symptoms of the disease.

SEC. 6. The abaca planters in the zonified abaca zones shall organize themselves and form a mosaic control association and elect their officers including one executive officer who may or may not be a member of such association.

SEC. 7. Such portion of the fiber inspection fees as may be collected from fibers coming from the abaca zones for the control of abaca mosaic disease shall be expended by the association in that area under the supervision of the Director of Plant Industry: *Provided, however,* That the owners of the plantations within the zonified areas under section two of this Act shall provide the mosaic control association through the Bureau of Plant Industry the necessary chemicals and laborers to be utilized in the campaign for the control of the mosaic disease, the said facilities to depend upon the degree of infestation as may be determined by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Plant Industry.

SEC. 8. The Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Plant Industry shall promulgate such rules and regulations as may be necessary to carry out effectively the purposes of this Act.

SEC. 9. The President of the Philippines is hereby empowered to suspend, by means of Executive Order, the effectivity of this Act or any provisions thereof whenever and/or wherever in his discretion public interest or welfare so requires.

SEC. 10. Violations of any of the provisions of this Act shall subject the violator, upon conviction, to a fine of not more than two hundred pesos or imprisonment of not more than six months, or both, such fine and imprisonment, at the discretion of the court.

SEC. 11. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 2467

[REPUBLIC ACT NO. 1177]

AN ACT TRANSFERRING THE SEAT OF GOVERNMENT IN THE MUNICIPALITY OF SAN PABLO, PROVINCE OF ISABELA, FROM ITS PRESENT SITE TO THE SITE OF THE BARRIO OF AUITAN IN THE SAME MUNICIPALITY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The site of the seat of government in the municipality of San Pablo, Province of Isabela, is transferred to the site of the barrio of Auitan in the same municipality.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 18, 1954.

H. No. 1685

[REPUBLIC ACT NO. 1178]

AN ACT TO FURTHER AMEND ACT NUMBERED ONE THOUSAND TWO HUNDRED EIGHTY-FIVE BY PROVIDING THAT THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS BE EXEMPTED FROM THE PAYMENT OF ALL TAXES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Act Numbered One thousand two hundred eighty-five is further amended by inserting between sections six and seven thereof, the following:

"SEC. 6–A. All provisions of law to the contrary notwithstanding, the society is exempted as of July four, nineteen hundred forty-six, from the payment of all taxes on any receipts or income received by it from whatever source."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 19, 1954.

H. No. 1495
S. No. 143

[REPUBLIC ACT NO. 1179]

AN ACT TO PROVIDE FOR THE PROMOTION OF VOCATIONAL REHABILITATION OF THE BLIND AND OTHER HANDICAPPED PERSONS AND THEIR RETURN TO CIVIL EMPLOYMENT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. This Act may be cited as Vocational Rehabilitation Act.

OBJECTIVES

SEC. 2. (*a*) To provide for the promotion of vocational training for the blind and other persons disabled by natural and/or accidental causes resulting in job handicap in the form of physical or mental impairment and their subsequent return from helplessness to competence; from dependency to self-sufficiency; from hopelessness to active participating and contributing members of society;

(*b*) To prepare such disabled persons for suitable employment so as to place them on the right jobs suitable to their abilities and talents;

(*c*) To train them to be able to take their rightful place in the economic and social activities of the country; and

(*d*) To make available to such persons vocational rehabilitation services as a legal right.

VOCATIONAL REHABILITATION OFFICE

SEC. 3. *Creation of.*—In order to ensure the most effective scheme of vocational rehabilitation of the blind and other handicapped persons to implement the social welfare program of the government in the amelioration of this deprived class of society, there is hereby established a Vocational Rehabilitation Office hereinafter referred as the Office. The Office shall be under the executive supervision and control of the Social Welfare Administrator and shall be headed by a chief who shall be referred to as Supervisor of the Vocational Rehabilitation Office. The said Supervisor shall be appointed by the Social Welfare Administrator and shall receive a compensation of five thousand four hundred pesos *per annum*.

POWERS AND DUTIES OF THE SOCIAL WELFARE ADMINISTRATOR

SEC. 4. Under this Act, the Social Welfare Administrator shall:

(*a*) Designate the Vocational Rehabilitation Office as the sole agency for the administration, supervision and control of the vocational rehabilitation program;

(*b*) Formulate the program, policies and methods in carrying out the work to render any or all services for the blind and handicapped persons;

(*c*) Provide that the vocational rehabilitation program be made available only to classes of employable individuals defined under this Act;

(*d*) Appoint qualified and technical personnel to carry out the work of the Vocational Rehabilitation Office as provided herein;

(*e*) Appoint, subject to civil service rules, such staff members as may be necessary and proper to carry out the provisions of this Act. Said staff members shall be composed of public officials whose status and conditions of service are such that they are independent of changes of government and of improper external influences, and recruited with sole regard to their qualifications; and that such persons shall be free from political domination and influence, and that subject to the needs of the service, they shall be assured of stability of employment in keeping with the highest standards of personal administration.

(*f*) Promulgate rules and regulations governing the administration of this Act; and exercise such powers and delegate such of these powers, except the making of rules and regulations, as he finds necessary in carrying out the purposes of this Act.

THE VOCATIONAL REHABILITATION PROGRAM

SEC. 5. To effect and facilitate rehabilitation of disabled individuals, the Office shall adopt and maintain a plan, to be known as Vocational Rehabilitation Plan, which shall be as follows:

(*a*) *Early start.*—The Office shall take care of the prompt location of the blind and handicapped either by correspondence or other means, so that rehabilitation may begin before he is unduly subjected to the disintegrating effects of idleness and hopelessness.

(*b*) *Rehabilitation diagnosis.*—The clinic of the Office shall subject each individual to medical examination, personal interviews and tests of aptitudes and interests with a view to meeting his problems and needs, discovering the nature and extent of his disability, and determining the type of work he might best perform. These medical examinations which include not only general medical examination but also specialist and laboratory examinations, may also be secured from hospitals and other allied government agencies according as each individual case may require.

(*c*) *Counseling and guidance.*—Each individual shall be given advice and made to understand by the counselor designated by the Office for each individual of his assets and liabilities, the causes of his problems and the steps

necessary to correct these difficulties so as to enable him to adjust to his handicaps and select the type of job fitted to his abilities.

(*d*) *Medical service.*—Physical restoration, when needed to remove or reduce disabilities shall be furnished and secured for the individual by the Office or by other allied government agencies on behalf of the client.

(*e*) *Vocational training.*—Having selected a specific job goal through the help and advice of the counselor, the Office shall furnish the disabled the necessary training and education necessary to fit them for the chosen work.

(*f*) *Auxiliary service.*—The Office shall provide transportation, books, other training materials, occupational tools, equipment and licenses where necessary during the period of vocational rehabilitation.

(*g*) *Placement.*—The Office shall secure for each individual employment best suited to his capacity and talents and for which he is trained.

(*h*) *Follow-up.*—The Office shall conduct and follow-up on the individual's job performance for a reasonable time to make whatever adjustments may be necessary, or to provide further medical, surgical, and psychiatric care if needed, or to supplement training if required.

PERSONAL STANDARD

SEC. 6. *General requirements of personnel of the Office.*—The officers and staff members of the Office should have a general knowledge of the adjustment and vocational training for the blind and other disabled persons, and a knowledge of all the services, both public and private, available to the blind and other disabled persons; and must be conversant in the casework techniques incident to the employment problems of the blind and other handicapped persons.

DUTIES AND POWERS OF THE SUPERVISOR OF THE VOCATIONAL REHABILITATION OFFICE

SEC. 7. It shall be the duty of the Supervisor.—

(*a*) To supervise and coordinate all rehabilitation services to the blind and other handicapped persons.

(*b*) Over-all supervision of all the disabled persons undergoing training in the Adjustment Center.

(*c*) To advise the different blind and other handicapped groups and associations in their activities for self-help.

(*d*) To keep tract of the latest progress in rehabilitation of the blind abroad and to direct efforts for the application of such which may be applied to the disabled persons in the Philippines.

(*e*) Whenever possible, to render vocational information service, self-inventory service and counseling service to the blind and other handicapped persons to help them determine decisions and plans to improve their lot.

(*f*) To supervise and arrange placement of training of the blind and other handicapped persons to the right job, either in sheltered workshop, self-employment, or employment with business or industrial or agricultural enterprises.

(*g*) To help maintain public relations especially among the local, civic, religious, and welfare agencies as those abroad.

(*h*) To help promote cordial relationships and healthy recreational activities among the organizations of the blind and other handicapped persons.

(*i*) To perform such duties as may be assigned to him by the Social Welfare Administrator from time to time.

ADJUSTMENT AND TRAINING CENTER PROGRAM

SEC. 8. To establish immediately an Adjustment and Training Center for the disabled persons with the following characteristics:

(1) A concentrated, individualized program for each client.

(2) The nucleus, at least, of a full-time staff. This nucleus shall consist of a rehabilitation specialist who shall act as supervisor of the center; qualified vocational counselors and instructors for the work projects and a property clerk.

(3) The evaluation, through a "team" approach, of the individual as a total personality.

(4) Opportunity for participation in a group as a motivating and learning device.

(5) An organized and systematic program to:

a. Assist each individual to acquire efficiency in the special techniques necessary to perform the demands of daily living;

b. Help each individual gain insight into his physical, psycho-social and vocational needs;

c. Provide exploratory or try-out work experiences to:

1. Demonstrate the wide variety of tasks each individual can perform;
2. More thoroughly evaluate the aptitudes and skills of each individual;
3. Train each individual to perform certain household tasks;
4. Develop desirable work habits and attitudes.

(6) There is a terminal point for each individual in the center program.

(7) There is a consolidation of the program experiences by the "team" to form the basis for future planning with each individual.

(8) In general, the Adjustment Center is a process of developing within the client a proper perspective toward his disability, as well as that of developing certain basic skills of the client in order to compensate for his handicap and loss of normal faculties.

a. Program flexibility.—

Flexibility in the outlined program may be obtained without sacrificing orderly procedure. While there must be a general schedule of instruction going on all the time, there has to be a schedule for an individual that will meet his needs in line with his capacities, his previous experiences and his objectives.

b. Program balance.—

An individual's program may be kept in balance through the use of a schedule which will be of maximum benefit to him. The formulation of such a schedule will be made apparent through consideration of diagnostic reports and proposed objective.

c. Client introduction to Center—

The introduction of the client to the center and to the program is of utmost importance since his first impressions are the most lasting. All preliminary reports of the client should be reviewed very carefully by the person who interviews him upon his arrival at the center. The first few days should be taken up by a free program of orientation to the center, both the physical plant and the program. When more experienced trainees are available, the new client should be assigned to a trainee whose interest and background most closely parallel his own and through this trainee he will soon become familiar with the various classrooms and extra curricular opportunities provided by the center. A similar procedure can be adopted for use by centers that service clients who enter in groups.

The Adjustment Center should operate eight hours a day, five instruction days per week for a minimum duration of three months with individual extension possible up to a maximum of six months. There shall be a gratuity allowance for the trainees to be fixed by the Social Welfare Administrator, and assigned as maintenance while in training.

d. Discharge of clients from Center—

When, through staff conference, it is determined that a client is prepared to accept vocational training or placement, definite plans are made for his discharge. If the counselor or the referral agency, concurs in the findings of the staff, the trainee is then called in for a personal conference at which time his entire progress is reviewed with him. At this conference also is ascertained his understanding of his future plans made by the referral agency. The definite time of departure is agreed upon, and transportation arrangements are made. Any necessary notification to his family, cooperating person or agency, is sent. It is very important that the trainee have a thorough understanding of his future plans and that he is satisfied in his own mind that he is ready for the next step in his rehabilitation program.

e. Records of Center Program—

The center workshop and agricultural projects should maintain and preserve service, employment and other operating records in sufficient detail to evaluate the capacities and limitations and his needs in relation thereto, outline his program, chart his progress and record his ultimate disposition.

The employment records for each client should show, in addition to identifying information, the kind of work performed, the hours worked (daily and weekly), the amount produced, the rate of pay, the amount earned in cash and otherwise, the date of payment and the period covered. The amount of premium pay for overtime work, cash subsidies or other cash assistance, deductions from wages, etc., should be recorded as separate items.

In addition to the above records, which apply to both homebound clients and those working in the workshop, each homebound cliend (or a person in the home of a homebound client) should maintain a daily reocrd of work performed. In addition to the identifying information, such record should show for each workday the

date, the starting and stopping times, the total hours worked, and the units produced. This record should be submitted to the center at stated intervals and should become part of the employment records.

All employment records should be preserved by the center for at least such periods as may be required by the Social Welfare Administration.

The center project should have adequate accounting, operation, sales and other records essential to the effective management of their responsible management board or committee at least quarterly. Their books should be audited annually by a certified public accountant or government auditor designated for that purpose.

ELIGIBILITY

SEC. 9. To be eligible for vocational rehabilitation a person must:

(*a*) Be of work age.

(*b*) Have a substantial job handicap in the form of physical or mental impairment.

(*c*) Have a reasonably good chance of becoming employable or of getting a more suitable job through rehabilitation services.

AVAILABILITY OF FUNDS

SEC. 10. Money to be made available for the purpose of the Act shall be raised by:

(*a*) Authorizing the President of the Philippines to set aside an annual fund raising week to be known as "Aid to the Blind and Handicapped Week". Money realized from such fund raising campaign shall constitute a trust fund to be known as "Blind and Handicapped Fund" which shall be under the control and administration of the Social Welfare Administrator.

(*b*) Authorizing the Philippine Charity Sweepstakes Office to hold, coincident with the fund raising week, one special sweepstakes race the whole proceeds of which shall after deducting the payment of prizes and expenses provided in Act Numbered Forty-one hundred thirty, as amended by Commonwealth Act Numbered Five hundred forty-six, be turned over to the Social Welfare Administrator which shall constitute a part of the said Blind and Handicapped Fund.

(*c*) Authorizing the appropriation out of any funds in the National Treasury not otherwise appropriated any such sums as may be necessary to carry out the purposes of this Act. The construction of the Training Center may be drawn from this allocation.

DEFINITIONS

SEC. 11. The following terms as used in this Act have the following meanings:

(*a*) *Vocational rehabilitation or rehabilitation services.*—Any service necessary to render a disabled individual fit to engage in a remunerative occupation.

(*b*) *Blind.*—A person having visual acuity not to exceed 20/200 in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than

twenty degrees. But a person who is blind in one eye only, or who has a visual acuity greater than 20/200 without a field defect shall not be considered blind for the purposes of this Act.

(*c*) *Disabled person.*—Includes not only the blind but also persons, with substantial job handicap in the form of physical or mental impairment.

EFFECTIVITY

SEC. 12. This Act shall take effect upon its approval.

Approved, June 19, 1954.

H. No. 2523

[REPUBLIC ACT NO. 1180]

AN ACT TO REGULATE THE RETAIL BUSINESS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. No person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business: *Provided,* That a person who is not a citizen of the Philippines, or an association, partnership, or corporation not wholly owned by citizens of the Philippines, which is actually engaged in the said business on May fifteen, nineteen hundred and fifty-four, shall be entitled to continue to engage therein, unless its license is forfeited in accordance herewith, until his death or voluntary retirement from said business, in the case of a natural person, and for a period of ten years from the date of the approval of this Act or until the expiration of the term of the association or partnership or of the corporate existence of the corporation, whichever event comes first, in the case of juridical persons. Failure to renew a license to engage in retail business shall be considered voluntary retirement.

Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth, nineteen hundred and forty-six, between that country and the Republic of the Philippines.

The license of any person who is not a citizen of the Philippines and of any association, partnership or corporation not wholly owned by citizens of the Philippines to engage in retail business, shall be forfeited for any violation of any provision of laws on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce and industry.

No license shall be issued to any person who is not a citizen of the Philippines and to any association, partnership or corporation not wholly owned by citizens of the Philippines, actually engaged in the retail business, to establish or open additional stores or branches for retail business.

SEC. 2. Every person who is not a citizen of the Philippines and every asosciaton, partnership or corporation not wholly owned by citizens of the Philippines, engaged in the

retail business, shall, within ninety days after the approval of this Act and within the first fifteen days of January every year thereafter, present for registration with the municipal or city treasurer a verified statement containing the names, addresses, and nationality of the owners, partners or stockholders, the nature of the retail business it is engaged in, the amount of its assets and liabilities, the names of its principal officials, and such other related data as may be required by the Secretary of Commerce and Industry.

SEC. 3. In case of death of a person who is not a citizen of the Philippines and who is entitled to engage in retail business under the provisions of this Act, his or her heir, administrator or executor is entitled to continue with such retail business only for the purpose of liquidation for a period of not more than six months after such death.

SEC. 4. As used in this Act, the term "retail business" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:

(*a*) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or

(*b*) a farmer or agriculturist selling the product of his farm.

SEC. 5. Every license to engage in retail business issued in favor of any citizen of the Philippines or of any association, partnership or corporation wholly owned by citizens of the Philippines shall be conclusive evidence of the ownership by such citizen, association, partnership or corporation of the business for which the license was issued, except as against the Government or the State.

SEC. 6. Any violation of this Act shall be punished by imprisonment for not less than three years and not more than five years and by a fine of not less than three thousand pesos and not more than five thousand pesos. In the case of associations, partnerships or corporations, the penalty shall be imposed upon its partners, president, directors, manager, and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, be dismissed from the public service, perpetually disenfranchised, and perpetually disqualified from holding any public office.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 19, 1954.

H. No. 1118

[REPUBLIC ACT No. 1181]

AN ACT TO TRANSFER THE MUNICIPAL SITE OF THE MUNICIPALITY OF DUPAX, PROVINCE OF NUEVA VIZCAYA, FROM ITS PRESENT LOCATION TO THE BARRIO OF MALASIN OF THE SAID MUNICIPALITY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The municipal site of the municipality of Dupax, Province of Nueva Vizcaya, is transferred from its present location to the barrio of Malasin of the said municipality.

SEC. 2. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 1248

[REPUBLIC ACT No. 1182]

AN ACT TO CHANGE THE NAMES OF CERTAIN STREETS IN THE DISTRICT OF TONDO, CITY OF MANILA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The streets of Pingkian, Kulambo, and Bangkusay in the district of Tondo, City of Manila, shall hereafter be known as Gregorio Perfecto Street, Rosauro Almario Street, and Francisco Varona Street, respectively.

SEC. 2. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 1528

[REPUBLIC ACT No. 1183]

AN ACT GRANTING THE METROPOLITAN BROADCASTING CO., INC. A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS AND STATIONS FOR TELEVISION IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the Metropolitan Broadcasting Co., Inc. is hereby granted a temporary permit, which shall continue in force during the time that the Government has not established similar service at the places selected by the grantee, to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations and stations for televesion in the Philippines: *Provided,* That this temporary permit shall be void unless the construction of at least one radio broadcasting station or one television station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further,* That the grantee shall provide adequate public service time to enable the Government, through the said radio broadcasting stations and stations for television, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting stations shall be applied, as far as practicable, to the television stations referred to in section one.

SEC. 3. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty for the full compliance and fulfillment of the conditions under which this temporary permit is granted.

SEC. 4. In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto*, become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 5. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the temporary permit, as other persons or corporations are now or hereafter may be required by law to pay.

(*b*) The grantee shall further be liable to pay all other taxes imposable by National Internal Revenue Code by reason of this franchise.

SEC. 6. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 7. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast and/or telecast from its stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided*, That the grantee, during any broadcast and/or telecast, may cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 8. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit is sold, transferred or assigned, shall be subject to all the conditions, terms, restrictions and limitations of this temporary permit as

fully and completely and to the same extent as if the temporary permit has been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 9. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 1667

[REPUBLIC ACT NO. 1184]

AN ACT GRANTING MR. MARIANO LACSON A TEMPORARY PERMIT TO ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT RADIOTELEPHONE STATIONS FOR THE TRANSMISSION AND RECEPTION OF WIRELESS MESSAGES TO AND FROM SAID STATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Mr. Mariano Lacson, his successors or assigns, is hereby granted a temporary permit to establish, maintain and operate private fixed point-to-point radiotelephone stations in the City of Pasay; Tolong, Oriental Negros; Cadiz, Negros Occidental and Calagna-an Island, Iloilo and in other parts of the Philippines where he operates his business, subject to the approval of the Secretary of Public Works and Communications, for the transmission and reception of wireless messages to and from said stations, including his motor boats.

SEC. 2. The President of the Philippines shall have the power and authority to permit the construction, maintenance and operation of said private fixed point-to-point radiotelephone stations on any land of the public domain upon such terms as he may prescribe.

SEC. 3. The temporary permit granted under this Act shall continue to be in force while the Government has not established similar service at places hereinabove stated, and subject to the condition that the grantee, his successors or assigns, shall start operation under said permit within one and a half years from the date of the approval of this Act.

SEC. 4. The grantee, his successors or assigns, shall not engage in domestic business of telecommunication in the Philippines, it being understood that the temporary permit granted under this Act merely secures the right of the grantee to establish, maintain and operate private fixed point-to-point radiotelephone stations at the places hereinabove stated for no other purpose than to promote, protect and subserve the trade and business interest of the grantee.

SEC. 5. The actual operation of said private fixed point-to-point radiotelephone stations shall not commence until after the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder.

SEC. 6. The grantee, his successors or assigns, shall so construct and operate such stations as not to interfere

with the operation of other radio stations maintained and operated in the Philippines.

SEC. 7. The grantee, his successors or assigns, shall hold the National, provincial, city and municipal governments of the Republic of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction of his radiotelephone stations.

SEC. 8. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril, calamity, disaster or disturbance of peace or order to cause the closing of the grantee's radiotelephone stations or to authorize the temporary use and operation thereof by any department of the Government upon just compensation.

SEC. 9. The temporary permit granted under this Act shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privilege herein provided for.

SEC. 10. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 1921

[REPUBLIC ACT NO. 1185]

AN ACT TO AMEND SECTIONS ONE, TWO AND THREE AND THE TITLE OF REPUBLIC ACT NUMBERED FIVE HUNDRED FORTY-SEVEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections one, two and three of Republic Act Numbered Five hundred forty-seven are amended to read as follows:

"SEC. 1. There is hereby granted to the Fernandez Hermanos, Inc., its successors or assigns, a temporary permit to construct, maintain and operate in the Philippines, at the following places, to wit: Main office—Manila City; Cañacao, Province of Cavite; Dalupiri Island, Province of Cagayan; Nasipit, Province of Agusan; Tungao, Province of Agusan; Camp Carmelita, Coron Island, Province of Palawan; Bugo, Province of Misamis Oriental; Ozamis City, Misamis Occidental; Del Monte, Province of Bukidnon; ships managed by Fernandez Hermanos; and at such places as the said company may select, subject to the approval of the Secretary of Public Works and Communications, private base, private fixed point-to-point and private coastal radio stations for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

"SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private base, private fixed point-to-point and private coastal radio stations or any of them on lands of the public domain upon such terms as he may prescribe.

"SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of said stations be completed within four years from the date of the approval of this amendatory Act."

SEC. 2. The title of Republic Act Numbered Five hundred forty-seven is amended to read as follows:

"An Act granting to the Fernandez Hermanos, Inc., a temporary permit to construct, maintain and operate private base, private fixed point-to-point and private coastal radio stations for the reception and transmission of radio communications within the Philippines."

SEC. 3. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 1961
S. No. 170

[REPUBLIC ACT NO. 1186]

AN ACT TO AMEND AND REPEAL CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX, OTHERWISE KNOWN AS "THE JUDICIARY ACT OF 1948" AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections eleven, twenty-eight, forty, forty-one, forty-two, the second, third, eleventh and twelfth paragraphs of sections forty-nine, fifty, fifty-one, fifty-two, the second, third, fourth, fifth, seventh, tenth and eleventh sub-paragraphs of the second paragraph of section fifty-four, and section sixty of Republic Act Numbered Two hundred and ninety-six, as amended, are amended to read as follows:

"SEC. 11. *Appointment and compensation of Justices of the Supreme Court.*—The Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments. The Chief Justice of the Supreme Court shall receive a compensation of twenty-one thousand pesos *per annum*, and each Associate Justice shall receive a compensation of twenty thousand pesos *per annum*. The Chief Justice of the Supreme Court shall be so designated in his commission; and the Associate Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them bear the same date, according to the order in which their commissions may have been issued by the President of the Philippines: *Provided, however,* That any member of the Supreme Court who has been reappointed to that Court after rendering service in any other branch of the Government shall retain the precedence to which he is entitled under his original appointment and his service in the Court shall, to all intents and purposes, be considered as continuous and uninterrupted.

"SEC. 28. *Qualifications and compensation of Justices of Court of Appeals.*—The Justices of the Court of Appeals

shall have the same qualifications as those provided in the Constitution for members of the Supreme Court. The Presiding Justice of the Court of Appeals shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, an annual compensation of fifteen thousand pesos.

"SEC. 40. *Judges of First Instance.*—The judicial function in Courts of First Instance shall be vested in District Judges, to be appointed and commissioned as hereinafter provided: *Provided, however,* That those who are District Judges at the time of the approval of this amendatory Act shall continue as such in their respective districts without need of new appointments by the President of the Philippines and new confirmations by the Commission on Appointments.

"SEC. 41. *Limitation upon tenure of office.*—District Judges shall be appointed to serve during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office, unless sooner removed in accordance with law.

"SEC. 42. *Qualification and salary.*—No person shall be appointed District Judge unless he has been ten years a citizen of the Philippines and has practiced law in the Philippines for a period of not less than ten years or has held during a like period, within the Philippines, an office requiring admission to the practice of law in the Philippines as an indispensable requisite.

"The District Judge shall receive a compensation at the rate of twelve thousand pesos *per annum.*

"SEC. 49. *Judicial Districts.*—Judicial districts for Courts of First Instance in the Philippines are constituted as follows:

"The First Judicial District shall consist of the Provinces of Cagayan, Batanes, Isabela, and Nueva Vizcaya;

"The Second Judicial District, of the Provinces of Ilocos Norte, Ilocos Sur, Abra, City of Baguio, Mountain Province and La Union;

* * * * * * *

"The Tenth Judicial District, of the Provinces of Camarines Sur, Albay, Catanduanes, Sorsogon and Masbate;

"The Eleventh Judicial District, of the Provinces of Capiz, Romblon and Iloilo, the City of Iloilo, and the Province of Antique;

* * * * * * *

"SEC. 50. *Judges of First Instance for Judicial Districts.*—Five judges shall be commissioned for the First Judicial District. Two judges shall preside over the Courts of First Instance of Cagayan and Batanes, and shall be known as judges of the first and second branches thereof, respectively, the judge of the second branch to preside also over the Court of First Instance of Batanes; two judges shall preside over the Court of First Instance of Isabela, and shall be known as the judges of the first and second branches thereof; and one judge shall preside over the Court of First Instance of Nueva Vizcaya.

"Seven judges shall be commissioned for the Second Judicial District. Two judges shall preside over the Court of First Instance of Ilocos Norte; two judges shall preside over the Court of First Instance of Ilocos Sur; one judge

shall preside over the Court of First Instance of Abra; one judge shall preside over the Court of First Instance of the City of Baguio and Mountain Province; and another judge shall preside over the Court of First Instance of La Union.

"Six judges shall be commissioned for the Third Judicial District. Five judges shall preside over the Court of First Instance of Pangasinan and shall be known as judges of the first, second, third, fourth and fifth branches thereof, respectively; two judges shall preside over the Court of First Instance of Lingayen to be known as the judges of the first branch and the second branch, respectively; two judges shall preside over the Court of First Instance of the City of Dagupan and shall be known as the judges of the third and fourth branches thereof, respectively, and one judge shall preside over the Court of First Instance of Urdaneta and shall be known as the judge of the fifth branch. One judge shall preside over the Court of First Instance of Zambales.

"Five judges shall be commissioned for the Fourth Judicial District. Three judges shall preside over the Courts of First Instance of Nueva Ecija and Cabanatuan City and shall be known as judges of the first, second, and third branches thereof, respectively; and two judges shall preside over the Court of First Instance of Tarlac, and shall be known as judges of the first and second branches thereof, respectively.

"Five judges shall be commissioned for the Fifth Judicial District. Two judges shall preside over the Court of First Instance of Pampanga and shall be known as judges of the first and second branches thereof, respectively; one judge shall preside over the Court of First Instance of Bataan; and two judges shall preside over the Court of First Instance of Bulacan and shall be known as judges of the first and second branches thereof, respectively.

"Eighteen judges shall be commissioned for the Sixth Judicial District. They shall preside over the Courts of First Instance of Manila and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth branches thereof, respectively.

"Eight judges shall be commissioned for the Seventh Judicial District. Five judges shall preside over the Courts of First Instance of the Province of Rizal, Quezon City and Pasay City and shall be known as judges of the first, second, third, fourth and fifth branches thereof, respectively; two judges shall preside over the Courts of First Instance of the Province of Cavite and the Cities of Cavite and Tagaytay, and shall be known as judges of the first and second branches thereof, respectively; and one judge shall preside over the Court of First Instance of Palawan.

"Seven judges shall be commissioned for the Eighth Judicial District. Three judges shall preside over the Courts of First Instance of Laguna and the City of San Pablo, and shall be known as judges of the first, second and third branches thereof, respectively; three judges shall preside over the Courts of First Instance of Batangas and the City of Lipa, and shall be known as judges of the first, second and third branches thereof, respectively;

and one judge shall preside over the Courts of First Instance of Mindoro Oriental, Mindoro Occidental and Marinduque.

"Four judges shall be commissioned for the Ninth Judicial District. Three judges shall preside over the Court of First Instance of Quezon and shall be known as judges of the first, second and third branches thereof, respectively; and one judge shall preside over the Court of First Instance of Camarines Norte.

"Seven judges shall be commissioned for the Tenth Judicial District. Three judges shall preside over the Courts of First Instance of Camarines Sur and Naga City and shall be known as judges of the first, second and third branches thereof, respectively; two judges shall preside over the Courts of First Instance of Albay and Legaspi City and of Catanduanes and shall be known as judges of the first and second branches thereof; one judge shall preside over the Court of First Instance of the Province of Sorsogon; and one judge shall preside over the Court of First Instance of Masbate.

"Seven judges shall be commissioned for the Eleventh Judicial District. Two judges shall preside over the Courts of First Instance of Capiz and Romblon and shall be known as judges of the first and second branches thereof, respectively, the judge of the first branch to preside also over the Court of First Instance of Romblon; and four judges shall preside over the Courts of First Instance of the Province of Iloilo and the City of Iloilo, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; and one judge shall preside over the Court of First Instance of the Province of Antique.

"Six judges shall be commissioned for the Twelfth Judicial District. Four judges shall preside over the Courts of First Instance of Occidental Negros and the City of Bacolod, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; and two judges shall preside over the Courts of First Instance of Oriental Negros, Dumaguete City and the sub-province of Siquijor.

"Nine judges shall be commissioned for the Thirteenth Judicial District. Three judges shall preside over the Courts of First Instance of Samar and Calbayog City and shall be known as judges of the first, second and third branches thereof, respectively; and six judges shall preside over the Courts of First Instance of Leyte and the Cities of Ormoc and Tacloban, and shall be known as judges of the first, second, third, fourth, fifth and sixth branches thereof, respectively.

"Six judges shall be commissioned for the Fourteenth Judicial District. Five judges shall preside over the Courts of First Instance of the Province of Cebu and the City of Cebu, and shall be known as judges of the first, second, third, fourth and fifth branches thereof, respectively; and one judge shall preside over the Court of First Instance of Bohol.

"Five judges shall be commissioned for the Fifteenth Judicial District. One judge shall preside over the Court of First Instance of Surigao; one judge shall preside over the Courts of First Instance of Agusan and Butuan City; one judge shall preside over the Courts of First Instance

of Oriental Misamis and Cagayan de Oro City; one judge shall preside over the Court of First Instance in the Province of Bukidnon; and one judge shall preside over the Court of First Instance of Lanao and the Cities of Dansalan and Iligan.

"Nine judges shall be commissioned for the Sixteenth Judicial District. Three judges shall preside over the Courts of First Instance of Davao and Davao City; two judges shall preside over the Court of First Instance of Cotabato; one judge shall preside over the Courts of First Instance of Occidental Misamis and Ozamis City; one judge shall preside over the Court of First Instance of Zamboanga del Norte; one judge shall preside over the Courts of First Instance of Zamboanga del Sur and Zamboanga City; and one judge shall preside over the Courts of First Instance of Sulu and Basilan City.

"SEC. 51. *Detail of judge to another district or province.*—Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court or branch of a court in a province, the Secretary of Justice may, in the interest of justice, with the approval of the Supreme Court and for a period of not more than three months for each time, assign any judge of any other court or province whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance, or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court.

"SEC. 52. *Permanent stations of district judges.*—The permanent station of judges of the Sixth Judicial District shall be in the City of Manila.

"In other judicial districts, the permanent stations of the judges shall be as follows:

"For the First Judicial District, the judge of the first branch of the Court of First Instance of Cagayan shall be stationed in the municipality of Tuguegarao, same province; the judge of the second branch, in the municipality of Aparri, same province; one judge shall be stationed in the municipality of Ilagan, Province of Isabela; one judge shall be stationed at Cauayan, Isabela; and another judge, in the municipality of Bayombong, Province of Nueva Vizcaya.

"For the Second Judicial District, two judges shall be stationed in the municipality of Laoag, Province of Ilocos Norte; two judges in the municipality of Vigan, Province of Ilocos Sur; one judge, in the City of Baguio, Mountain Province; one judge, in the municipality of Bangued, Province of Abra; and one judge, in the municipality of San Fernando, Province of La Union.

"For the Third Judicial District, two judges shall be stationed in the municipality of Lingayen, Province of Pangasinan; two judges shall be stationed in the City of Dagupan; and one judge in the municipality of Iba, Province of Zambales; and one in the municipality of Urdaneta.

"For the Fourth Judicial District, three judges shall be stationed in the City of Cabanatuan, and two judges in the municipality of Tarlac, Province of Tarlac.

"For the Fifth Judicial District, one judge shall be stationed in the municipality of San Fernando, Province of Pampanga; and one judge shall be stationed in the municipality of Guagua, Province of Pampanga; one judge in the municipality of Balanga, Province of Bataan; and two judges, in the municipality of Malolos, Province of Bulacan.

"For the Seventh Judicial District, the two judges of the first and second branches of the Court of First Instance of Rizal shall be stationed in the municipality of Pasig, same province; that of the third branch, in Pasay City; and those of the fourth and fifth branches, in Quezon City; one judge, in the municipality of Puerto Princesa, Province of Palawan; and two judges, in the City of Cavite.

"For the Eighth Judicial District, two judges shall be stationed in the municipality of Biñan and the municipality of Santa Cruz, Province of Laguna, respectively, and one judge, in the City of San Pablo; the judge of the first branch of the Court of First Instance of Batangas shall be stationed in the municipality of Batangas, Province of Batangas; and those of the second and third branches, in the City of Lipa and the municipality of Balayan, Province of Batangas, respectively; and one judge, in the municipality of Calapan, Province of Mindoro Oriental.

"For the Ninth Judicial District, the two judges shall be stationed in the municipality of Lucena, Province of Quezon; one judge shall be stationed in the municipality of Gumaca, in the same province; and one judge, in the municipality of Daet, Province of Camarines Norte.

"For the Tenth Judicial District, three judges shall be stationed in the City of Naga, Province of Camarines Sur; two judges in Legaspi City; one judge, in the municipality of Sorsogon, Province of Sorsogon; and one judge in the municipality of Masbate, Province of Masbate.

"For the Eleventh Judicial District, one judge shall be stationed in Roxas City and Romblon; and one judge, in the municipality of Calivo, Province of Capiz; and four judges, in the City of Iloilo; and one judge in the municipality of San Jose de Buenavista, Province of Antique.

"For the Twelfth Judicial District, four judges shall be stationed in the City of Bacolod; and two judges, in the City of Dumaguete.

"For the Thirteenth Judicial District, the judge of the first branch of the Court of First Instance of Samar shall be stationed in the municipality of Catbalogan, Province of Samar; the judge of the second branch, in the municipality of Borongan, same province; and the judge of the third branch, in the municipality of Laoang, same province; the judges of the first and second branches of the Court of First Instance of Leyte shall be stationed in the City of Tacloban, the judge of the third branch, in the municipality of Maasin, Province of Leyte; the judge of the fourth branch, in the municipality of Baybay, same province; the judge of the fifth branch, in the City of Ormoc; and the judge of the sixth branch, in the municipality of Carigara, Leyte.

"For the Fourteenth Judicial District, five judges shall be stationed in the City of Cebu; and one judge, in the municipality of Tagbilaran, Province of Bohol.

"For the Fifteenth Judicial District, one judge shall be stationed in the municipality of Surigao, Province of Surigao; one judge, in the City of Cagayan de Oro; one judge, in the City of Dansalan; one judge, in the municipality of Malaybalay, Province of Bukidnon; and one judge, in the City of Butuan.

"For the Sixteenth Judicial District, three judges shall be stationed in the City of Davao, Province of Davao; two judges in the municipality of Cotabato, Province of Cotabato; one judge, in the municipality of Oroquieta, Province of Occidental Misamis; one judge, in the municipality of Dipolog, Province of Zamboanga del Norte; one judge, in the City of Zamboanga; and one judge in the municipality of Jolo, Province of Sulu."

"SEC. 54. *Places and time of holding Court.*—* * *

* * * * * * *

"Second Judicial District: At Bontoc, Mountain Province, on the first Tuesday of March, June, and November of each year; and, whenever the interest of justice so require, a special term of court shall be held at Labuagan, subprovince of Kalinga.

"Seventh Judicial District: At Coron, Province of Palawan, on the first Monday of June and November of each year; and at Cuyo, same province, on the second Thursday of June and November of each year.

"Eighth Judicial District: The judge shall hold special term at the municipalities of Lubang, Mambunao and San Jose, Mindoro Occidental; Pinamalayan and Roxas, Mindoro Oriental, once every year, as may be determined by him; at Boac, Province of Marinduque, on the first Tuesday of March, July and October of each year.

"Ninth Judicial District: At Infanta, Province of Quezon, for the municipalities of Infanta, Casiguran, Baler and Polillo, on the first Tuesday of January and June of each year.

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"Eleventh Judicial District: At Culasi, Province of Antique, on the first Tuesday of December of each year.

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"Fifteenth Judicial District: At Cantilan, Province of Surigao, on the first Tuesday of August of each year; a special term of court shall also be held once a year in either the municipality of Tandag or the municipality of Hinatuan, Province of Surigao, in the discretion of the district judge; at Mambajao, Province of Oriental Misamis, on the first Tuesday of March of each year. A special term of court shall, likewise, be held, once a year, either in the municipality of Talisayan or in the municipality of Gingoog, Province of Oriental Misamis, in the discretion of the district judge; at Iligan, Province of Lanao, on the first Tuesday of March and October of each year, and at any time of the year at the municipality of Baroy.

"Sixteenth Judicial District: At Dipolog, Province of Zamboanga del Norte, terms of court shall be held at least four times a year and in the municipality of Sindangan of said province, on dates to be fixed by the district judge; at Pagadian, Zamboanga del Sur, at least three times a

year; at Isabela, City of Basilan, at least four times a year on dates to be fixed by the district judge; at Baganga and Mati, Province of Davao; and at Glan, Province of Cotabato, terms of court shall be held at least once a year on dates to be fixed by the district judge.

* * * * * * *

"SEC. 60. *Division of business among branches of Court of Sixth District.*—In the Court of First Instance of the Sixth District all cases relative to the registration of real estate in the City of Manila and all matters involving the exercise of the powers conferred upon the fourth branch of said court or the judge thereof in reference to the registration of land shall be within the exclusive jurisdiction of said fourth branch and shall go or be assigned thereto for disposition according to law. All other business appertaining to the Court of First Instance of said district shall be equitably distributed among the judges of the eighteen branches, in such manner as shall be agreed upon by the judges themselves; but in proceeding to such distribution of the ordinary cases, a smaller share shall be assigned to the fourth branch, due account being taken of the amount of land registration work which may be required of this branch: *Provided, however,* That at least four branches each year shall be assigned by rotation to try only criminal cases.

"Nothing contained in this section and in section sixty-three shall be construed to prevent the temporary designation of judges to act in this district in accordance with section fifty-one."

SEC. 2. Whenever the words "Judge-at-Large" or "Cadastral Judge" appear in Republic Act Numbered Two hundred and ninety-six, the same shall read "District Judge".

SEC. 3. All the present district judges shall continue as such, but if any district judge is commissioned for the Courts of First Instance of two provinces, and a separate district judge has been provided for herein for one of such courts, the former shall have the option to select the court over which he shall continue to preside and notify the President of his selection within reasonable time. If the number of branches in any Court of First Instance has been increased, the district judge presiding over any branch thereof in a particular place shall continue to preside over such branch notwithstanding a change in its number under the provisions of this Act.

All the existing positions of Judges-at-Large and Cadastral Judges are abolished, and section fifty-three of Republic Act Numbered Two hundred and ninety-six is hereby repealed.

SEC. 4. Any judge-at-large or cadastral judge who shall not be appointed as district judge by virtue of the provisions of this Act, shall be given a gratuity in an amount of one month's salary for each year of service of such judge, the total amount not to exceed the salary for one year. The sum necessary to carry out the provisions of this Act is hereby appropriated.

SEC. 5. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 2132

[REPUBLIC ACT No. 1187]

AN ACT CREATING THE MUNICIPALITY OF SAN ISIDRO IN THE PROVINCE OF SAMAR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Calagundian, Irenas, Caguititan, Palanit, San Juan, Veriato, and San Roman are separated from the municipality of Allen, Province of Samar, and constituted into a new and regular municipality to be known as the municipality of San Isidro in the same province.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 2373

[REPUBLIC ACT No. 1188]

AN ACT CLASSIFYING AS A TRUCK INSTEAD OF AS AN AUTOMOBILE THE MOTOR VEHICLE POPULARLY KNOWN AS JEEP, FOR THE PURPOSES OF THE IMPOSITION AND COLLECTION OF THE SALES TAX.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. For purposes of the imposition and collection of the sales tax, the motor vehicle technically denominated "one-fourth ton truck, four by four" and popularly known as the jeep, is hereby classified as a truck, and every original sale, barter, exchange or similar transaction involving the transfer of ownership of, or title to, said motor vehicle shall be subject to the payment of the tax provided for in section one hundred eighty-six of the National Internal Revenue Code, as amended.

SEC. 2. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

H. No. 2501

[REPUBLIC ACT No. 1189]

AN ACT AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES TO ENTER INTO TRADE AGREEMENTS WITH OTHER COUNTRIES FOR A LIMITED PERIOD AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. For the purpose of expanding foreign markets for Philippine products as a means of assisting in the economic development of the country, in overcoming domestic unemployment, in increasing the purchasing

power of the Philippine peso, and in establishing and maintaining better relationship between the Philippines and other countries, the President of the Philippines is authorized from time to time:

(*a*) To enter into foreign trade agreement with foreign governments or instrumentalities thereof; and,

(*b*) To impose and regulate duties and other import restrictions, including those already in existence as are required by the exigencies and the well being of the country or as are appropriate to carry out and promote foreign trade with other countries: *Provided, however,* That in regulating import duties no increase or decrease thereof shall be made which shall exceed by or be less than fifty per cent of any existing rate of duty.

SEC. 2. Every foreign trade agreement concluded pursuant to this Act shall be subject to termination upon due notice to the foreign government concerned at the end of not more than three years from the date on which the agreement comes into force and, if not then terminated, shall be subject to termination thereafter upon not more than six months' notice.

SEC. 3. The authority of the President to enter into foreign trade agreements under section one of this Act shall terminate on the expiration of three years from the date of the enactment of this Act.

SEC. 4. Nothing in this Act shall be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the Philippines or any claim of the Philippines against any foreign country.

SEC. 5. Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provision of this Act, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may prescribe; and before concluding such agreement the President shall seek information and advice with respect thereto from the Philippine Tariff Commission, the Department of Agriculture and Natural Resources and from such other sources as he may deem appropriate.

SEC. 6. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 20, 1954.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

PROVINCIAL CIRCULAR
(Unnumbered)

August 26, 1954

CONSTABULARY ESCORT FOR PRISONERS TO BILIBID PRISON, EXPENSES OF—

To all Provincial Governors and City Mayors:

Section 870 of the Administrative Code reads as follows:

"SEC. 870. *Expenses incident to transportation of prisoners and escort duty in general.*—The Philippine Constabulary shall pay the cost of transportation of prisoners from the place of arrest to the place where they are turned over to the province or to a court official for trial, and thereafter, and until turned over to the Bureau of Prisons, all necessary transportation shall be paid by the province concerned.

"The subsistence and travel expenses of officers and the travel expenses of enlisted men and escort duty shall likewise be borne by the Philippine Constabulary and the Bureau or Province for which the service was rendered."

The Headquarters of the Philippine Constabulary in a Communication, dated July 19, 1954, states:

"Respectfully returned to the Chief, Local Government, Office of the President, Manila, with the information that under Constabulary operations, escorts for insular prisoners confined at any provincial jail being transferred to the New Bilibid Prisons, Muntinglupa, Rizal, shall be provided for by the Provincial Commander of the province of origin. Such prisoners will be brought directly to and delivered at the insular prisons. Under section 870 of the Revised Administrative Code, the travel expenses of the PC escort on duty shall be borne by the Philippine Constabulary."

* * * * *

As may be seen above, the expenses of Constabulary escort for prisoners to the Bilibid Prison at Muntinglupa, Rizal, are payable by the Philippine Constabulary while the expenses of provincial guards accompanying said prisoners are payable by the province or city concerned. As the duty to escort Insular prisoners is more of National rather than Municipal obligation, it is requested that, in order to minimize expenditure of local funds in transferring said prisoners to the national penitentiary a certain form of arrangement be made so that whenever prisoners are transferred to Muntinglupa the least possible number of provincial guards be assigned with the Constabulary escort. It should also be emphasized here that inasmuch as the purpose of the trips of these guards to Manila is to conduct the prisoners, they should return to their station immediately thereafter and not stay in this capital for a number of days on the pretext of following up official matters which do not have any connection with their duties as provincial guards or which could be transacted by correspondence. Needless to state, the service of these provincial guards are needed all the time in their respective stations because in many provinces and cities their number is not adequate to guard prisoners kept in their respective jails. It is therefore enjoined that, after delivery of the prisoners to the National Prisons, the guards return to their station immediately.

FRED RUIZ CASTRO
Executive Secretary

PROVINCIAL CIRCULAR
(Unnumbered)

August 28, 1954

NAMING OR RENAMING OF POLITICAL DIVISIONS AND SUB-DIVISIONS AND PUBLIC PLACES, BUILDINGS, AND INSTITUTIONS AFTER LIVING PERSONS,—PROHIBITION AGAINST.

To all Provincial Boards and City Councils or Municipal Boards:

For the information and guidance of, and implementation by, all government authorities concerned, there is quoted hereunder the provisions of Republic Act No. 1059 entitled "An Act prohibiting the naming of sitios, barrios, municipalities, cities, provinces, streets, highways, avenues, bridges, and other public thoroughfares, parks, plazas, public schools, public buildings, piers, government aircrafts and vessels, and other public institutions after living persons":

"SECTION 1. The naming of sitios, barrios, municipalities, cities, provinces, streets, high-

ways, avenues, bridges, and other public thoroughfares, parks, plazas, public schools, public buildings, piers, government aircrafts and vessels, and other public institutions and places after living persons is hereby prohibited, except when it is a condition in a donation in favor of the government. Any ordinance or resolution adopted contrary to the provisions of this Act shall be null and void.

"SEC. 2. The naming of streets, highways, avenues, bridges and public thoroughfares, parks, plazas, sitios, barrios, municipalities, cities, provinces, public schools, public buildings, piers, government aircrafts and vessels, and other public institutions and places after living persons, except those made pursuant to existing Acts of Congress, which are still in effect on the date of the approval of this Act, are hereby declared null and void and the proper authorities are hereby directed to make the corresponding changes within six months after the approval of this Act.

"SEC. 3. This Act shall take effect upon its approval.

"Approved, June 12, 1954."

Provincial or municipal boards or city or municipal councils are hereby requested to furnish with copies of their resolutions or ordinances adopted in pursuance of section 2 of the law just quoted making the changes required therein, the following national and local offices, for their information and record purposes:

NATIONAL OFFICES

1. Office of the President
2. Philippines Historical Committee
3. Bureau of Lands
4. Bureau of Posts
5. Bureau of the Census and Statistics
6. General Land Registration Office

LOCAL OFFICES

1. Provincial Board as regards resolutions or ordinances adopted by the municipal councils
2. Office of the Provincial or City Assessor, as the case may be
3. Office of the District or City Engineer as the case may be
4. Office of the Register of Deeds

Provincial Boards are also requested to transmit the contents hereof to all municipal councils in their respective provinces.

FRED RUIZ CASTRO
Executive Secretary

MEMORANDUM CIRCULAR

September 8, 1954

ELIMINATION OF "RED TAPE"

To all departments, bureaus and offices of the government, including government-owned and controlled corporatons and the local governments:

One of the most common complaints against the Government is "red tape." When one speaks of "red tape" in the government, he means that the processes and procedures by which the government conducts its business are cumbersome, time consuming, inefficient, etc. In most cases, the victim is the citizen whom the government is supposed to serve. As a result, dissatisfaction is created against the government. "Red tape" also delays the carrying out of the programs and policies of the administration and creates a tendency on the part of the people transacting business with the government to go outside regular channels, using influence and other similar means to achieve their desired ends.

One may ask: How may "red tape" in the government be eliminated? This can be done:

1. By fixing responsibility.
2. By delegating authority to subordinates.
3. By having final action taken at the lowest possible level in the organization.
4. By having complete staff work.
5. By improving coordination and cooperation between government agencies.
6. By making certain that the processes and procedures by which agency functions are carried out are as simple and efficient as possible.

It should be remembered, however, that the processes and procedures in handling a certain subject may be efficient today but may not be necessarily so tomorrow because the administration of government is dynamic.

For example, the desk of the chief of an office is often found piled high with papers awaiting action. Some may be impressed that the head of the office concerned is a very busy person but it really shows him to be a poor administrator. For this reason, it is well that the great majority of such matters be delegated to subordinates, thereby leaving the chief's time and attention for supervision, formulation of policies and planning.

To carry this out effectively, directors and chiefs of bureaus and offices should inventory matters which come to their desks for action. Those which can very well be handled and acted upon finally at the lowest possible agency or unit of the office concerned should be so dispatched without the intervention of the chief of the office. Responsibility will not be taken unless given, and when

given, it must go with the necessary authority to act.

Care should be taken to eliminate unnecessary review of a particular function or transaction at several levels and coursing it through many hands at the same level. To fragment a process into too many steps would be dilatory. While the ostensible reason for this procedure may be to make certain that the action taken is correct or that it is desired to prevent the commission of anomalies, the inevitable result is to delay action and to diffuse responsibility to the point that it cannot be fixed. Procedures should, therefore, be as simple as possible, with but few steps and straight line.

It is important that matters presented to the chief or head of an office must be complete. If a matter or problem is presented for solution, it must have been thoroughly examined by the corresponding chief of division in the office concerned, who should submit his recommendation as to the action to be taken with possible alternatives. Reasons for the recommendation made must also be submitted, together with the necesary letter, order, etc., to implement such recommendation, so that the head of the office can readily reach a decision, and at the same time cause its effectuation. This is the concept of completed staff work which can help to eliminate "red tape."

Departments, bureaus and other agencies of the government should have persons who are responsible for the conduct of administrative management surveys. The processes and procedures by which an agency carries out its function should be given periodic review. This is one way in which administrative efficiency can be well maintained.

With the suggestions made above, it is hoped to reduce to the minimum, if not entirely eliminate, "red tape" in the government through which its program of administration can be expected to go forward.

FRED RUIZ CASTRO
Executive Secretary

PROVINCIAL CIRCULAR
(Unnumbered)

September 10, 1954

CLOTHING MATERIALS FOR UNIFORM OF POLICEMEN AND/OR PROVINCIAL GUARDS—PURCHASE OF—

To All Provincial Governors and City Mayors:

This Office has, of late, been receiving requests from several provinces, cities and municipalities, for authority to purchase locally police and/or provincial guard uniforms made of west point khaki, theco de luxe, which is an imported clothing material. Executive Order No. 524, series of 1952, provides that "all requisitions for clothing materials needed by all Departments, bureaus, offices, agencies, instrumentalities and political subdivisions of the Government, including the corporations owned and controlled by the Government, the armed forces, government hospitals, and public educational institutions shall be forwarded to the Textile Mills of the National Development Company for the purpose of filling such requisitions, whenever available, from the stocks of the mills." Information has been received from the General Manager of the National Development Company that the textile mills of said Company is engaged at present in the manufacture of 2.00 mercerized khaki which could be used in the making of the uniform for members of the police force at ₱1.50 per yard.

Sections 1 and 4 of Commonwealth *Act No. 138* provides as follows:

> "SECTION 1. The Purchase and Equipment division of the Government of the Philippines and other officers and employees of the municipal and provincial governments and the Government of the Philippines and of chartered cities, boards, commissions, bureaus, departments, offices, agencies, branches and bodies of any description, including government owned companies, authorized to requisition, purchase, or contract or make disbursements for articles, materials and supplies for public use, public buildings, or public works, shall give preference to materials and supplies produced, made, and manufactured in the Philippines or in the United States, and to domestic entities, subject to the conditions hereinbelow specified."
>
> * * * * * * *
>
> "SEC. 4. Whenever several bidders shall participate in the bidding for supplying articles, materials, and equipment for any of the dependencies mentioned in section one of this Act for public use, public buildings, or public works, the award shall be made to the domestic entity making the lowest bid, provided it is not more than fifteen per centum in excess of the lowest bid made by a bidder other than a domestic entity, as the term 'domestic entity' is defined in section two of this Act."

As may be noted, it is clearly the mandate of the Government that preference be given to locally manufactured articles in awarding contracts for the acquisition of materials and supplies for public use, the purpose being not only to protect local industries and help the development thereof but also to conserve our dollar reserves.

In accordance with the foregoing, this Office has consistently refused to authorize the purchase of foreign materials for use in the making of uniforms for policemen or provincial guards in preference to the locally made products, notwithstanding representations made as to the urgency of the need to acquire the same and the lower prices and better quality of these imported goods.

This circular is being issued, therefore, as guidance for all concerned and as notice that this Office will not entertain any request for exemption from the existing regulations as any such exemption will operate to defeat the object and purposes of the executive order and the law on this matter.

Governors and City Mayors are requested to transmit the contents hereof to all concerned for their information and guidance.

FRED RUIZ CASTRO
Executive Secretary

CIRCULAR

September 13, 1954

DATE OF OBSERVANCE OF UNITED NATIONS WEEK

To all Provincial Governors and City Mayors:

As stated in our Circular of August 12, 1954, the United Nations Week is celebrated during the period from October 18th to 24th of every year. However, it is understood from the authorities concerned that for this year, the United Nations Week will be observed from October 16th up to the 24th. It is, therefore, requested that the program of activities for the Week so far made be adjusted accordingly.

This modifies our circular of August 12, 1954.

Please have the contents hereof transmitted to all the local officials under your jurisdiction for their information and guidance.

SOFRONIO C. QUIMSON
Technical Assistant and In-Charge, Civil Affairs and Chairman, Committee on Provincial and City Participation

Department of Finance

DEPARTMENT ORDER NO. 211

September 10, 1954

PROCEDURE FOR THE ENFORCEMENT OF THE ANTI-DUMPING ACT, REPUBLIC ACT NO. 32, WITH RESPECT TO IMPORTATIONS, EITHER DUTIABLE OR DUTY-FREE, THAT WOULD DESTROY OR INJURE AN INDUSTRY EFFICIENTLY AND ECONOMICALLY OPERATED OR PREVENT THE DEVELOPMENT OF AN INDUSTRY THAT IS BEING SO ESTABLISHED.

By authority of section 6 of Republic Act No. 32, otherwise known as the Anti-Dumping Act, the following regulations are hereby promulgated for the information and guidance of all concerned.

SECTION 1. *Scope of this Department Order.*—The provisions of this department order shall apply to cases of importations or attempted importations from all foreign countries, whether dutiable or duty-free, which have or would have the effect or tendency to destroy or injure an industry efficiently and economically operated in the Philippines or to prevent the development of an industry that is being so established. The provisions of Department of Finance Order No. 37, dated January 13, 1947, shall be applicable to other cases of dumping dealt with under Republic Act No. 32.

SEC. 2. *Importations of Certain Commodities by Government Agency.*—Where for the purpose of preventing the destruction of or injury to a local industry that is being efficiently and economically operated, or which is being so established, and at the same time giving protection to the interest of the consuming public, the proper government authorities adopt a plan to regulate the importation of certain commodities and designate a government agency, either directly or through awardees, to undertake the importation of such commodities, the government agency concerned shall submit its program of importation to the Secretary of Finance for consideration and approval. Importations made under such program, as approved by the Secretary of Finance, will be deemed not in violation of the Anti-Dumping Act.

SEC. 3. *Action by the Commissioner of Customs in Cases of Importations Affecting Local Industries.*—In connection with the duty imposed upon him under section 1 of Republic Act No. 32, the Commissioner of Customs shall consult with the proper departments and offices of the Government as well as with local producers, manufacturers, and chambers of industries or similar organizations, with a view to gathering information on local industries which are efficiently and economically operated or which are being so established. On the basis of such information, whenever the Commissioner has reasons to believe that any owner, importer, consignee or agent is importing or about to import articles, goods, wares or merchandise, either dutiable or duty-free, which importations or attempted importations have or would have the effect or tendency to destroy or injure an industry efficiently and economically operated in the Philippines, or prevent the development of an industry that is being so established, it shall be his duty to make a report thereof to the Secretary of Finance who shall order an investigation on the matter by a Board composed of the Commissioner of Customs, the Collector of Internal Revenue, and the Director of Commerce.

All importations reported by the Commissioner of Customs to the Secretary of Finance under these regulations shall not be released pending final decision thereon in accordance with sections 2 and 3 of Republic Act No. 32 and section 5 of these regulations.

The provisions of these regulations shall not apply to any single importation the dutiable value of which does not exceed ₱100 provided that (1) such importation is not intended for barter, sale, hire or other commercial purposes; and (2) the importer or shipper has not received the benefit of exemption for the same or like article within 180 days preceding the importation in question.

SEC. 4. *Action by the Board of Investigators on Cases of Importations Affecting Local Industries.*—Upon receipt of the records of the importation as well as the report of the Commissioner of Customs to the effect that he has reasons to believe that the importation or attempted importation has or would have the effect or tendency to destroy or injure an industry efficiently and economically operated or will prevent the development of an industry that is being so established, the Secretary of Finance shall convene the Board to investigate the matter.

The investigation shall include a hearing or hearings where the owner, importer, consignee or agent by whom or for whose account the merchandise is imported or parties affected or other interested parties shall have an opportunity to be heard and to present evidence bearing on the subject matter of the investigation. The heads of bureaus and offices of the Government or their authorized representatives, as well as local producers, manufacturers, and representatives of chambers of industries or similar organizations which may have been consulted or which may have given information on the character of the operation of the local industry that may be destroyed or injured by the importation or importations in question, may be requested to attend the investigation and testify on such information given to the Commissioner of Customs.

The Board shall have the authority to administer oaths, summon witnesses and require the production of documents under a *subpoena duces tecum* or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character. Any one who, without lawful excuse, fails to appear upon summons issued by the Board or who, appearing before the Board, refuses to make oath, give testimony or produce documents for inspection, when thereunto lawfully required, shall be subject to discipline as in case of contempt in the manner prescribed by law.

The Board shall make a report of their findings within 30 days to the Secretary of Finance who shall render a decision on whether or not the importation under investigation is violative of Republic Act No. 32 and on the disposition of the articles covered by the importation.

SEC. 5. *Appeal.*—The decision of the Secretary of Finance shall become final after the lapse of 15 days from the date copy thereof is received by the owner, importer, consignee or agent unless appeal therefrom is made to the President of the Philippines before the expiration of the said period. Pursuant to section 3 of Republic Act No. 32, the decision of the President of the Philippines on the appeal shall be final.

SEC. 6. *Duty of Collectors of Customs and Appraisers.*—It shall be the duty of all collectors of customs as well as customs' appraisers to bring to the attention of the Commissioner of Customs any case coming within their notice which, in their opinion, may require action by the Commissioner of Customs as provided in this Order.

SEC. 7. *Applicability of Provisions of Department Order No. 37.*—All provisions of Department Order No. 37, dated January 13, 1947, not inconsistent with the provisions hereof are hereby made part of these regulations.

SEC. 8. *Publicity.*—Philippine customs officers shall give due publicity to the provisions of this Order.

SEC. 9. *Effectivity.*—This Order shall take effect upon its publication in the *Official Gazette*.

JAIME HERNANDEZ
Secretary

Department of Justice

ADMINISTRATIVE ORDER NO. 122

August 23, 1954

AUTHORIZING JUDGE JOSE P. VELUZ, FIFTEENTH JUDICIAL DISTRICT, COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL AND CAGAYAN DE ORO TO DECIDE CASES.

In the interest of the administration of justice and pursuant to the request of Judge Jose P. Veluz of the Fifteenth Judicial District, Courts of First Instance of Misamis Oriental and Cagayan de Oro City, he is hereby authorized to decide cases during his leave from August 26, 1954 to September 24, 1954.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 123

August 21, 1954

AUTHORIZING JUDGE FELIX V. MAKASIAR TO HOLD COURT IN ESCALANTE, NEGROS OCCIDENTAL.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Felix V. Makasiar, Judge of the Twelfth Judicial District, Courts of First Instance of Occidental Negros and Bacolod City, Fourth Branch, is hereby authorized to hold court in the municipality of Escalante,

Province of Negros Occidental, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 124

August 17, 1954

CONFIRMING THE AUTHORITY FOR JUDGE PATRICIO CENIZA OF MISAMIS OCCIDENTAL AND OZAMIS CITY TO HOLD COURT IN SAID CITY, SAME PROVINCE.

In the interest of the administration of justice, the authority for Judge Patricio Ceniza of the Sixteenth Judicial District, Misamis Occidental and Ozamis City, to hold court in said City, same province, pursuant to the provisions of section 56 of Republic Act No. 296, from August 3 to 31, 1954, for the purpose of trying all kinds of cases and to enter judgments therein, is hereby confirmed.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 125

August 17, 1954

AUTHORIZING JUDGE PATRICIO CENIZA, SIXTEENTH JUDICIAL DISTRICT, MISAMIS OCCIDENTAL AND OZAMIS CITY TO HOLD COURT IN BALIANGAO, MISAMIS OCCIDENTAL.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Patricio Ceniza, Judge of the Sixteenth Judicial District, Misamis Occidental and Ozamis City, is hereby authorized to hold court in Baliangao, Misamis Occidental, from October 25, 1954 to November 6, 1954, for the purpose of trying all kinds of cases and to enter judgments hterein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 126

August 18, 1954

AUTHORIZING TECHNICAL ASSISTANT VICENTE ABAD SANTOS, DEPARTMENT OF JUSTICE TO SIGN AND APPROVE APPLICATION FOR VACATION LEAVE AND/OR SICK LEAVE EXCEPT FOR APPLICATION FOR VACATION LEAVE AND/OR SICK LEAVE OF DIRECTORS AND ASSISTANT DIRECTORS OF BUREAUS, JUDGES OF FIRST INSTANCE AND PROVINCIAL AND CITY FISCALS.

In the interest of the public service and pursuant to the provisions of paragraph 1, Executive Order No. 324 of the President, dated February 11, 1941, and of section 615 of the Revised Administrative Code, Mr. Vicente Abad Santos, Technical Assistant, Department of Justice, is hereby authorized to sign and approve application for vacation and/or sick leave that may be granted in accordance with sections 284 and 285-A of the Administrative Code as amended by Commonwealth Act No. 220 and Republic Act No. 218, except application for vacation and/or sick leave of Directors and Assistant Directors of Bureaus, Judges of First Instance and Provincial and City Fiscals. He will sign as follows:

"For the Secretary of Justice:

VICENTE ABAD SANTOS
Technical Assistant"

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 127

September 3, 1954

DESIGNATING FIRST ASSISTANT PROVINCIAL FISCAL IRINEO V. BERNARDO OF RIZAL TO ASSIST THE PROVINCIAL FISCAL OF CAVITE IN THE INVESTIGATION AND PROSECUTION OF CRIMINAL CASES.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Irineo V. Bernardo, First Assistant Provincial Fiscal of Rizal, is hereby designated to assist the Provincial Fiscal of Cavite in the investigation and prosecution of the cases entitled "People *vs.* Romulo Saulog, et al." and "People *vs.* Amulong," et al.", both for murder (Criminal cases 11729 and 11736, CFI, Cavite), effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 128

September 3, 1954

DESIGNATING PROVINCIAL FISCAL FELICIANO BELMONTE OF MOUNTAIN PROVINCE AS ACTING JUDGE OF THE MUNICIPAL COURT OF BAGUIO CITY.

In the interest of the public service and pursuant to the provisions of section 2562 of the Revised Administrative Code, Mr. Feliciano Belmonte, Provincial Fiscal of Mountain Province, is hereby designated Acting Judge of the Municipal Court of Baguio City, beginning September 10, 1954, and to

continue only during the absence on leave of the incumbent.

JESUS G. BARRERA
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 129

August 31, 1954

DETAILING JUDGE ANTONIO CAÑIZARES OF RIZAL TO THE PROVINCE OF QUEZON TO RENDER DECISION IN A CIVIL CASE WHICH WAS PREVIOUSLY TRIED BY HIM.

In the interest of the administration of justice and with the approval of the Supreme Court, the Honorable Antonio Cañizares, Judge of the Seventh Judicial District, Rizal, First Branch, is hereby detailed to the Province of Quezon, Ninth Judicial District, for the purpose of rendering the decision in Civil Case No. 5353 entitled "Felix Raguda *vs.* Andres Raguda and Felipe Marasigan" which was previously tried by him while presiding over the Court of First Instance of Quezon Province.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 130

September 9, 1954

AUTHORIZING JUDGE FIDEL IBAÑEZ, MANILA, TO DECIDE PENDING CASES AND INCIDENTS AND TO PROMULGATE THE SAME THROUGH HIS DEPUTY CLERK OF COURT DURING HIS ABSENCE.

In the interest of the administration of justice and pursuant to the request of Judge Fidel Ibañez of the Sixth Judicial District, Manila, Branch IX, he is hereby authorized to decide pending cases and incidents and to promulgate the same, through his Deputy Clerk of Court, during his leave of absence from September 6 to 25, 1954, inclusive.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 131

September 10, 1954

ANTHORIZING JUDGE TEODORO CAMACHO, OF LAGUNA AND SAN PABLO CITY TO HOLD COURT IN SAN PABLO CITY, DURING FRIDAYS AND SATURDAYS TO TRY ALL KINDS OF CASES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Teodoro Camacho, Judge of the Eighth Judicial District, Laguna and San Pablo City, second branch, is hereby authorized to hold court in San Pablo City, during Fridays and Saturdays, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 132

September 14, 1954

DETAILING TEMPORARILY ACTING FIRST ASSISTANT PROVINCIAL FISCAL JUANITO DE LA RIARTE OF ORIENTAL MISAMIS TO PERFORM *TEMPORARILY* THE DUTIES OF ACTING PROVINCIAL FISCAL OF BUKIDNON.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Juanito de la Riarte, Acting First Assistant Provincial Fiscal of Oriental Misamis, is hereby temporarily detailed to the province of Bukidnon, there to perform the duties of Acting Provincial Fiscal, effective immediately and to continue during the illness of the regular Provincial Fiscal thereof.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 133

September 11, 1954

AUTHORIZING JUDGE EMILIO BENITEZ OF SAMAR TO HOLD COURT IN THE MUNICIPALITY OF MACARTHUR, PROVINCE OF SAMAR, DURING THE MONTHS OF OCTOBER AND NOVEMBER, 1954, INSTEAD OR IN GUIUAN, SAME PROVINCE TO TRY ALL KINDS OF CASES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Emilio Benitez, Judge of the Thirteenth Judicial District, Samar, Second Branch, is hereby authorized to hold court in the municipality of MacArthur, Province of Samar, during the months of October and November, 1954, instead of in Guiuan, same province, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 134

September 14, 1954

AUTHORIZING JUDGE SEGUNDO APOSTOL OF LANAO AND DANSALAN AND ILIGAN CITIES TO HOLD SPECIAL TERM OF COURT IN ILIGAN CITY FROM SEPTEMBER 20TH TO OCTOBER 3RD, 1954.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Segundo Apostol, Judge of the Fifteenth Judicial District, Lanao and Dansalan and Iligan Cities, is hereby authorized to hold special term of court in Iligan City from September 20th to October 3rd, 1954, for the purpose of trying the following cases and to enter judgments therein.

Criminal Case No. 1049—P. P. *vs.* Pukunum Mama, et al.—Attempted murder;
Criminal Case No. 1153—P. P. *vs.* Bakua Pacunum, for murder;
Criminal Case No. 1242—P. P. *vs.* Datu Pukunum, for murder; and
Criminal Case No. 1389—P. P. *vs.* Pikinim Mama and Salsal Orandig for murder with double frustrated murder.

PEDRO TUASON
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF PLANT INDUSTRY

ADMINISTRATIVE ORDER NO. 2, SERIES 1954
(Revised)

July 22, 1954

REGULATIONS GOVERNING THE IMPORTATION AND EXPORTATION OF PLANT MATERIALS INTO AND FROM THE PHILIPPINES.

Under authority conferred by sections 1, 2, and 11 of Act No. 3027, entitled "An Act to Protect the Agricultural Industries of the Philippine Islands from Injurious Plant Pests and Diseases Existing in Foreign Countries, etc.," which authority is now vested in the Director of Plant Industry and the Secretary of Agriculture and Natural Resources by virtue of Act No. 3639, Administrative Order No. 2, Series of 1951, containing regulations governing the importation, bringing or introduction of plant materials into and exportation of the same from the Philippines, is hereby revised and promulgated for the information and guidance of all concerned.

1. *Definitions.*—The following terms when used in this Administrative Order shall mean as follows:

(*a*) "Person," any natural or juridical person such as corporations, partnerships, societies, associations, firms, companies and other legal entities.

(*b*) "Plant materials," any living plants, rhizomes, fruits, seeds, cuttings, bulbs and corms, grafts, leaves, roots, scions and fruit pits, and such other parts of plants as are capable of propagation, or of harboring plant pests and diseases.

(*c*) "Plant Quarantine Officer," any person so designated by the Director of Plant Industry to act as the latter's representative and having a written appointment issued by the Director of Plant Industry.

(*d*) "Country," any independent political units or sovereign nations, territories, colonies and political or territorial subdivisions.

(*e*) "Disinfection," any scientific treatment applied for the purpose of destroying any infection or infestation that may occur on, in or against plant materials.

(*f*) "Special Quarantine Order," shall mean those Administrative Orders issued by the Director of Plant Industry prohibiting or restricting the importation of certain plant materials.

2. *Plant materials for which permit is required.*—Plant materials which are governed by special quarantine orders now in force and those which may hereafter be made subject to such orders, may be imported in limited quantities, under permit from the Director of Plant Industry, from countries which maintain plant quarantine and inspection service, for the purpose of keeping this country supplied with new varieties and necessary propagating stock. The same plant materials may also be imported in limited quantities, under quarantine, from countries not maintaining plant quarantine and inspection service, provided they are to be used for experimental purposes only, and under such conditions as the Director of Plant Industry may impose. The importation of all plant materials falling under this section shall be made only through the Port of Manila subject to the particular administrative orders governing them and upon filing with the Director of Plant Industry, an application for a permit to import same (B.P.I. Form No. 32).

The Director of Plant Industry, with the approval of the Secretary of Agriculture and Natural Resources shall issue a supplementary notice, whenever any country not mentioned in the corresponding special quarantine order is found and determined to be infested with any injurious insect or infected with any plant disease to the effect that the importation of plant materials from such country shall, thereafter, be governed by the special quarantine order. He shall likewise issue a supplementary notice, with the approval of the said Department Head, whenever any country is found and determined to be free from injurious insects and plant diseases, to the effect that the plant materials, in general, or those mentioned in the special quarantine order concerned may be imported from such country, subject to the provisions of this Order regarding entry, inspection, certification, treatment, etc.

3. *Application for permit to import plant materials.*—All persons who intend to import plant materials must first file an application with the Director of Plant Industry on B.P.I. Form No. 33. On approval of the Director of Plant Industry of

such application, a permit shall be issued in quadruplicate (B.P.I. Form No. 34). The original copy shall be given to the applicant for presentation to the plant quarantine officer at the port of entry, the duplicate shall be forwarded to the said plant quarantine officer, the third copy shall be sent to the Collector of Customs, and the fourth copy shall be filed with the application. Before the issuance of the permit, however, the Director of Plant Industry may, to insure compliance with the conditions imposed herein, require the importer to file a bond in the amount equal to the invoice cost of the plant materials imported, but in no case less than ₱100.

4. *Notice of arrival by the permittee.*—Immediately upon the arrival of plant materials at the port of entry, the permittee or the person bringing into the country plant materials should notify the Director of Plant Industry of the arrival of plant materials under permit upon B.P.I. Form No. 35, stating the number of permit, name of ship or vessel, date of arrival, the country and locality where grown, name of exporter, name of importer, agent or broker at the port of entry, character and quantity of plant materials.

5. *Notice of shipment by permittee.*—Upon landing the plant materials and before removal from the port of entry of each separate shipment or consignment thereof, the permittee shall notify the Director of Plant Industry on B. P. I. Form No. 36, stating the number of permit, the date of arrival, the name and address of the consignee to whom it is proposed to forward the plant materials, the probable date of shipping, and route of transportation. A separate report is required of each ultimate consignee. Plant materials which have once been passed and released by a duly authorized plant quarantine officer may be moved from place to place without restriction other than those imposed on the interprovincial movement of domestic plant materials, after due notice to the Director of Plant Industry.

6. *Revocation of permits.*—Permits may be revoked and further permits refused for the importation of plant materials from any grower or exporter of any foreign country who has violated Act No. 3027 or any rules and regulations promulgated thereunder; or for the importation of plant materials from any foreign country where inspection is considered by the Bureau of Plant Industry, as the result of its examination of importations therefrom, to be merely perfunctory, or because of the failure of the permittee to give the notice required by this order, or because a false or incomplete notice has been given, or a shipment has been intentionally mislabelled or any other rules or regulations duly issued have not been complied with.

7. *Foreign certificate of inspection.*—Importations of fruits, vegetables, seeds and other plant materials from foreign countries must be accompanied by certificates of inspection issued by the proper government authority of the country of origin, stating that the materials are free from injurious insects and plant diseases. Where the government maintains plant quarantine service, the certificates of inspection required in this order shall be that of inspection of plant materials issued by the chief, or director of the plant quarantine service or his duly authorized representatives, as the case may be, of the country or place of origin. In countries the government of which do not maintain plant quarantine service, the certificates of inspection of plant materials required in this Order must be accomplished by the exporter or shipper concerned duly subscribed and sworn to by him before a person legally authorized to administer oaths in the country of origin containing, among other things, a statement to the effect that the plant materials did not originate from a place where injurious insects or plant diseases were prevalent, that they have not been kept or stored in places infested by injurious insects or infected by plant diseases, and that whatever treatment, fumigation, disinfection, etc., as required by the Director of Plant Industry prior to shipment has been done. Persons who import plant materials accompanied by certificate that they are free from injurious insects and diseases issued by the inspector of the country of origin or executed by the exporter or shipper in accordance with the provisions of this section, shall be required to present the certificate to the office of the plant quarantine officer. Presentation of such certificate, however, shall not preclude inspection by the plant quarantine officials of this country if deemed necessary. A fee of ten pesos shall be charged for failure of the importer or agent concerned to present the required certificate at the time of inspection of the imported plants or plant materials, but such payment shall not mean that the presentation of the certificate when received has been waived. He must file an affidavit stating that he should surrender the required certificate within 30 days from receipt of his shipment and failure to comply with same would be penalized under section 19 of this Administrative Order.

Incoming shipments of plants and plant materials with a permit previously secured from the Director of Plant Industry, shall not be removed from the place of landing or customs zone, without the required fees for their inspection, certification, fumigation, disinfection or entrance, as the case may be, having been first paid by the importer, consignee or other interested party. Shipments arriving without permit from the Director of Plant Industry shall either be confiscated or returned to the port of origin or reshipped elsewhere at the expense of the importer, consignee or interested party: *Provided, however,* that when the plant materials such as fruits, vegetables, seeds, or other parts of plants covered by such shipments are not imported from countries some of the plant materials of which are prohibited entry into the Philippines and are not

intended for propagation purposes and those facts are sworn to by said importer, consignee or interested party, the Director of Plant Industry may waive the aforementioned requirement and allow entry, subject to the conditions herein set forth.

8. *Inspection and certification.*—All persons who intend to import plant materials must submit to the Bureau of Plant Industry an application for inspection of incoming plants, upon B. P. I. Form No. 37 on or before the arrival of such shipment. All such plant materials shall be inspected upon arrival for any injurious insects and plant diseases. All plants which are found to be free from such insects and diseases shall be so certified and tagged with B. P. I. Form No. 38 or stamped and allowed to enter. Plant materials found to be infested by injurious insects or infected with diseases shall be returned to the port of origin or destroyed, at the option of the importer. In either case the cost shall be borne by the importer.

9. *Disinfection or fumigation.*—Plant materials imported under section 2 hereof shall, at the expense and responsibility of the importer, be subject, as a condition of entry, to such dissinfection or fumigation as may be required by the Plant Quarantine Officer, and may be planted in isolated places designated by the Director of Plant Industry until evidence is available showing that no injurious insects or plant diseases are present.

10. *Freedom of plant materials from sand soil or earth.*—All plant materials desired to be imported must be free from sand, soil or earth, and all plant roots, rhizomes, tubers, etc., must be washed to thoroughly free them from such sand, soil or earth, and must be so certified by the duly authorized officer of the country of origin or by the exporter or shipper in accordance with the provisions of section 8 hereof: *Provided,* That sand, soil or earth, may be employed for the packing of bulbs and corms when they have been sterilized or rendered safe in accordance with the methods prescribed by the Bureau of Plant Industry and this fact is so certified by the duly authorized inspector of the country or origin or by the exporter or shipper in accordance with the provisions of said section.

11. *Approval of paking materials.*—All packing materials employed in the importation of nursery stock and other plants and seeds shall be passed upon and approved by the Bureau of Plant Industry as to their safety for such use. Such packing materials must not previously have been used for packing in connection wtih living plants, and, except for bulbs and corms must be free from sand, soil or earth and must be certified as meeting these conditions by the duly authorized inspector of the country of origin or by the exporter or shipper in accordance with the provisions of section 8 hereof.

12. *Plant materials held under quarantine.*—Any case, box, package, or other container of plant materials under quarantine shall be so marked by attaching to it a quarantine sign, B. P. I. Form No. 39, clearly indicating to the employees of common carriers as well as the public that the container in question is being held subject to qaurantine rules and regulations promulgated by the Director of Plant Industry. The transfer of or tampering with any case, box, package or other materials containing plant materials under quarantine, is prohibited until such plant materials contained in the case, box, package or other container have been released by such an officer.

13. *Plant materials for which permit is not required.*—Fruits, vegetables, cereals and other plant products designed for food purposes, or properly dried, sterilized, or poisoned botanical specimens when free from sand, soil or earth and when not governed by special quarantine orders, may be imported, but subject to the conditions specified in section 8.

14. *Ports of entry.*—Imported plant materials except those covered with special quarantine orders shall only be admitted entry through the ports of Manila, Cebu, Iloilo, Zamboanga, Legaspi, Davao, Jolo, Aparri, Jose Panganiban, Tacloban, San Fernando, La Union and Cagayan de Oro, and no others.

15. *Incoming plant materials by mail.*—Imported plant materials through the post office shall be inspected by the plant quarantine officials upon notification of the presence of such materials at the post office. These plant materials shall be treated like those coming through the custom house. Inspection shall be made in the presence of either the consignee, a port official or both.

16. *Fees.*—The fees for the fumigation or disinfection of all imported seeds, plants, materials or parts theerof, or of soil or any material whatsoever used for packing or covering same which is determined or suspected to be infested with injurious insects or infected with plant diseases, the fees for the inspection and certification of plant materials for exportation or for domestic movement and for each permit issued to a private party to import plants and plant materials, shall be as follows:

Fumigation fees.—For every cubic meter or less of gas used or space occupied by the material being treated in the fumigation chamber, including labor	₱1.00
Disinfection fees.—For every liter or less of disinfectant used, including labor	₱1.50

The same fees shall also be charged for local seeds, plants or plant materials, or of soil or any material whatsoever used for packing or covering same which are submitted for fumigation, disinfection, or other treatment, as the case may be.

Inspection and certification fees.—For every certificate, issued for the inspection of plant materials such as fruits, seeds, nuts, grains, and similar

other materials for export or import, fees, shall be charged as follows:

Fifteen centavos per parcel irrespective of the size or a minimum charge of ₱1.50.

In case of living plants, particularly orchids, a minimum charge of ₱2 for a shipment of 10 plants or less shall be charged. For a shipment of living plants in excess of 10 plants a minimum charge of ₱0.20 for each additional plant shall be collected. The above does not include charges for cleaning and treatment when these are necessary. The amount shall be based on the cost of labor and materials consumed therefore furnished by the Bureau.

Fees for issuance of permit.—For permit issued either to import plants or plant materials ..... ₱5.00

Inspection of plants for internal or domestic shipment.—Leaving plants, particularly abaca and bananas transported from quarantined areas within the country, shall be inspected free of charge but the interested parties shall first secure the necessary permit from the Director of Plant Industry, Manila, or from his duly authorized representative in the infected province concerned before any shipment is made.

17. *Application for inspection of plant materials for exportation.*—All persons who intend to export plant materials must submit to the Director of Plant Industry an application for inspection of plant materials for they desire to export, upon B.P.I. Form No. 40, within a reasonable time before the shipment so as to allow proper inspection and certification.

18. *Certification of plant materials for exportation.*—If the plant materials upon inspection are found to be free from plant diseases and injurious insects, a certificate (B.P.I. Form No. 41) shall be issued by the plant quarantine officer to the exporter to accompany the shipment or the correspondence regarding the shipment, as the case may be. A copy of such certificate shall be filed in the Plant Quarantine Office. A tag (B.P.I. Form No. 42) issued by the said office to the exporter should be attached to the shipment. Plant materials showing the presence of injurious insects or plant diseases shall be returned to the exporter without certification. Under no condition shall certificates of freedom from diseases and injurious insects be given for plant materials which have been taken from, or mixed with other plants which are badly diseased or infested. Certificates of inspection of plant materials for exportation shall be given only after careful investigation of the history of such plant materials. Certification shall not be made for any plant material intended for shipment to a country in which their entrance is absolutely prohibited.

19. *Penal provisions.*—(*a*) Any person who violates or contravenes any of the provisions of this Administrative Order, or who forges, counterfeits, alters, defaces, or destroys any certificate or any paper issued by virtue of this order shall be liable to prosecution, and upon conviction shall suffer the penalty provided in section 13 of Act No. 3027, which is a fine not exceeding ₱1,000 or imprisonment of not exceeding 6 months, or both, in the discretion of the court, and such other penalties as are prescribed in the Revised Penal Code. (*b*) Any violation of the provisions hereof will be a legal basis for the confiscation of the importer's bond required in section 3 of this order.

20. *Repealing provisions.*—All previous orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Order, are hereby revoked.

21. *Effective date.*—This Order shall take effect on the date of approval by the Secretary of Agriculture and Natural Resources.

CORNELIO V. CRUCILLO
Acting Director of Plant Industry

Approved, September 17, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

BUREAU OF ANIMAL INDUSTRY

ANIMAL INDUSTRY ADMINISTRATIVE ORDER NO. 9

RULES AND REGULATIONS GOVERNING MEAT INSPECTION IN THE PHILIPPINES

Pursuant to the provisions of section 1765 of the Revised Administrative Code as amended by Act No. 3639 and Commonwealth Act No. 82, the following rules and regulations are hereby promulgated for the information and guidance of all concerned:

ARTICLE I—*Title*

SECTION 1. This Order shall be known as Meat Inspection Regulations.

ARTICLE II—*Definitions*

SEC. 2. For purposes of this Order, the following words, phrases, names and terms shall be construed, respectively, to mean:

"Food Animal" includes all livestock killed for human consumption, such as cattle, carabaos, buffaloes, horses, sheep, goats, hogs, deer, etc.

"A National Abattoir".—A slaughterhouse established and operated by the Bureau of Animal Industry in accordance with the provisions of Act No. 2758, as amended, and Commonwealth Act No. 340.

"A Municipal Abattoir".—A slaughterhouse established and operated by chartered cities, municipalities and municipal districts under the provisions of Act No. 4142, as amended.

"A Licensed Private Abattoir".—A slaughterhouse which may be established and operated by a private person under the provisions of any law or an ordinance of chartered cities, municipalities or municipal districts.

"Inspector".—A veterinarian or livestock inspector of the Bureau of Animal Industry detailed to do meat inspection work or meat inspector appointed under Commonwealth Act No. 82, or an employee designated as meat inspector by the Secretary of Agriculture and Natural Resources pursuant to the provisions of Commonwealth Act No. 82.

"Inspected and Passed".—Or any authorized abbreviation thereof: That the carcasses or parts of carcasses so marked have been inspected and passed under these regulations, and at the time they were inspected, passed and so marked they were found to be sound, healthful, wholesome and fit for human food.

"Passed for Sterilization".—That the carcasses or parts of carcasses so marked have been inspected and passed for food subject to the condition that they shall first be sterilized by steaming in an apparatus or by boiling in open kettle until they are thoroughly cooked.

"Passed for Rendering".—That the carcasses or parts of carcasses so marked have been inspected and passed subject to the condition that they shall be rendered into lard or tallow as prescribed by article VII of this Order.

"Passed for Refrigeration".—The carcasses or parts of carcasses so identified have been inspected and passed on condition that they be refrigerated or otherwise handled as prescribed by this order.

"Retained".—That the carcasses, viscera, part of carcass, meat or other article so marked or identified is held for further examination by an inspector to determine its disposal.

"Inspected and Condemned".—Or any authorized abbreviation thereof: That the carcasses or part of carcasses so marked are unsound, unhealthful, unwholesome, or otherwise unfit for human food.

MEAT: The edible part of the muscle of food animals, which is skeletal or found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing.

SUSPECT: The animal suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by an inspector to determine its disposal.

REACTOR: An animal which is found and marked or tagged with either tuberculosis, brucellosis, glanders after due biological test and examination proved positive and when slaughtered it shall be treated as suspect. Glander cases marked (G) shall be condemned outright.

DOWNER: A crippled or weakened animal as a result of the trip by any means of transportation. It shall be treated as a suspect.

ARTICLE III—*Scope of Meat Inspection*

SEC. 3. This Order shall apply to all slaughterhouses and establishments where animals are slaughtered for human food, meat markets, refrigerating plants and other establishments duly authorized to operate meat inspection in accordance with the provisions of Commonwealth Act No. 82.

SEC. 4. Only veterinarians and livestock inspectors of the Bureau of Animal Industry detailed to do meat inspection work and meat inspectors duly appointed or designated as such by the Secretary of Agriculture and Natural Resources in accordance with the provisions of Commonwealth Act No. 82 are authorized to perform meat inspection work.

SEC. 5. Except in those cases specifically provided in this Order, no animal shall be slaughtered for food without the ante-mortem examination required by these rules and regulations. Carcasses or part of carcasses of animal slaughtered without such ante-mortem examination shall be condemned.

SEC. 6. No person, firm, or corporation shall store, traffic, transport, sell or otherwise dispose of for food any carcasses or parts of carcasses which have not been previously inspected and passed in accordance with this Order. Carcasses of animals or parts thereof which are stored, transported, sold or otherwise disposed of without inspection, or those found upon inspection to be unfit for human consumption shall be condemned in accordance with the provisions of this Order.

SEC. 7. The condemnation of the carcasses as herein provided shall not be in lieu of, but shall be in addition to, the penalties provided in these rules and regulations.

ARTICLE IV—*Ante-Mortem Inspection*

SEC. 8. An ante-mortem examination and inspection shall be made of cattle, carabaos, horses, swine, sheep and goats and deer about to be slaughtered at all national, city, municipal and licensed private abattoirs, before their slaughter shall be allowed. Such examination and inspection shall be made in pens in the premises of the establishment at the time of slaughter.

SEC. 9. Any animals plainly showing on ante-mortem inspection any disease or condition that under this Order would cause condemnation of its carcass shall be marked "CONDEMNED", isolated immediately and disposed of under the supervision of the inspector in accordance with Animal Industry Administrative Order No. 5.

SEC. 10. The diseases or conditions which shall warrant outright condemnation are: Anthrax, hog cholera, swine plague, swine erysipelas, rabies, rinderpest, tetanus, glanders, milk fever, hemorrhagic septicemia, advanced stage of pregnancy, signs of recent parturition, and immaturity. Animals

found dead or in a dying condition should likewise be condemned.

SEC. 11. Any animal which on ante-mortem inspection do not plainly show, but is suspected of being affected with, any disease or condition that under this Order may cause condemnation, in whole or in part, on post-mortem inspection, shall be marked "SUSPECT" and retained until final post-mortem inspection when the carcass shall be finally marked and disposed of as provided in this Order. Any animal termed "DOWNER" not otherwise condemned under the provisions of this Order shall also be considered "SUSPECT".

SEC. 12. (*a*) All hogs, although not marked "SUSPECTS", which are in lots of which some have been condemned or marked as suspects for either hog cholera or swine plague, and all animals marked as suspects shall be slaughtered separately from animals passed on ante-mortem inspection.

(*b*) A hog suspected of being affected with hog cholera or swine plague may be set aside and isolated for observation or treatment. If after the treatment, the same is fully recovered or is found negative, it should be released for slaughter or for any other purpose.

(*c*) Swine, other than one hyperimmuned, offered for slaughter within twenty-eight days following injection with hog cholera virus, shall be condemned. Hyperimmuned swine shall be condemned if offered for slaughter within ten days after hyperimmunization.

(*d*) All boars which are mature sexually and swine stags which show evidence of recent castration shall be marked and treated as suspects.

SEC. 13. Animals found on ante-mortem examination to be affected with anasarca in advance stages and characterized by an extensive and generalized edema shall be condemned, while those affected to a lesser degree shall be marked "suspect" and disposed of in accordance with this Order. Those affected with anasarca to a slight degree may be set apart and held for treatment and if fully recovered, may be released for any purpose.

SEC. 14. (*a*) Animals affected with anthrax or hemorrhagic septicemia on ante-mortem inspection shall be marked "CONDEMNED" and disposed of in accordance with the provisions of Bureau of Animal Industry Administrative Order No. 5. The matter shall be reported to the veterinarian of the province. A thorough cleaning and disinfection of the infected pens, corrals, and driveways shall be ordered immediately.

(*b*) No animal in a lot in which anthrax or hemorrhagic septicemia is found on ante-mortem inspection shall be presented for slaughter until it has been determined by a careful ante-mortem reinspection that no infected animal remains in the lot. Animals which have been treated with anthrax biologicals which do not contain living anthrax organisms shall not be presented for post-mortem inspection in less than twenty-one days. Animals which have been injected with anthrax vaccine (live organisms) within six weeks and those bearing evidence of reaction to such treatment, such as inflammation, tumefaction, or edema at the site of injection, shall be condemned on ante-mortem inspection, or shall be retained under official supervision until the expiration of the 6-week period and the disappearance of any reaction to the treatment.

SEC. 15. (*a*) Tuberculin, contagious abortion and mallein reacting animals shall be marked suspect and disposed of in accordance with this Order except that in the case of glanders (G) the animal so affected shall be condemned and buried. Special report of the post-mortem findings in the first two diseases shall be rendered to the Director of Animal Industry through the Provincial Veterinarian concerned.

(*b*) Any goat reacting to the contagious abortion test shall be condemned outright.

ARTICLE V—*Post-Mortem Inspection*

SEC. 16. A careful post-mortem examination and inspection shall be made of the carcasses and parts thereof of all cattle, carabaos, horses, swine, sheep, goats and deer slaughtered at any national, city, municipal or licensed private abattoir. This examination shall be so conducted that the inspector shall have seen all parts of the carcasses and shall have either palpated or incised, or both, all the lymph glands and organs and shall have made any other examinations or tests, such as incising the muscles, etc., as may be necessary for the rigid and thorough determination of disease. Carcasses and parts thereof shall be properly cleaned and dressed to facilitate inspection.

SEC. 17. Each carcass, including all parts and attached organs thereof, in which any lesion of disease or other condition is found that might render the meat or any organ unfit for food, and which for that reason would require a subsequent inspection, shall be retained by the inspector at the time of inspection. Such retained carcass, parts and detached organs thereof shall be held until the final inspection has been completed. Retained carcasses shall neither be washed nor trimmed unless authorized by the inspector.

In all cases the identification shall be established by affixing "RETAINED" tags immediately upon inspection. These tags shall not be removed except by an inspector.

SEC. 18. Each carcass, or part thereof which is found on final inspection to be unsound, unhealthful, unwholesome, or otherwise unfit for human consumption shall be conspicuously marked "CONDEMNED" on the surface tissues thereof at the time of inspection. Condemned detached organs and parts of such character that they cannot be so marked shall be immediately placed in trucks or receptacles which shall be plainly marked "CONDEMNED". All condemned carcasses, parts or organs shall remain in the custody of the inspector, and

shall be tanked as required in these regulations at or before the close of the day they were condemned or be locked in the "CONDEMNED" room or compartment and disposed of in accordance with this Order.

SEC. 19. Carcasses and parts of carcasses passed for sterilization shall be conspicuously marked "PASSED FOR STERILIZATION" on the surface tissue thereof by the inspector at the time of inspection. All carcasses and parts shall be sterilized in accordance with the provisions concerning rendering and sterilization.

If only a portion is to be condemned on account of localized disease or a slight lesion of disease, the whole of the diseased portion shall be removed immediately before the "RETAINED" tag is taken from the carcass. The removed portion shall be immediately tanked, placed in the retaining room until its final disposition or placed in receptacles with strong disinfectants.

SEC. 20. Carcasses and parts found to be sound, healthful, wholesome and fit for human food shall be passed and marked as provided in these regulations.

SEC. 21. Carcasses or parts of carcasses shall not be altered or modified by inflating air, smearing blood, coloring, or by transferring caul or other fat from fat to lean carcasses or by attaching portion of the hide of one species to the carcass or parts of carcass of another. Carcasses or parts so altered for deceitful purposes shall be confiscated and condemned and the infractor prosecuted for violation of this Order.

SEC. 22. When it is necessary for human reason to slaughter an injured animal at night or on a Sunday or a Holiday an inspector should be notified so that a post-mortem examination may be made, but when the inspector is not available, the animal should be killed in the presence of a representative of the Municipal or City Treasurer or of the Chief of Police. The carcass and all parts thereof shall be kept for inspection with the head and all viscera, except the stomach, bladders and intestines, held by their natural attachments. If all parts are not so kept for inspections, the carcass shall be condemned. If on inspection of a carcass of the animal slaughtered any lesion or condition is found indicating that the animal was sick or diseased, the carcass shall be condemned.

ARTICLE VI—*Disposal of Diseased Carcasses and Parts*

SEC. 23. Disposition of diseased carcasses and parts; general.

The carcasses or parts of carcasses of all animals slaughtered for public consumption in the slaughterhouses or licensed abattoirs and found at the time of slaughter or at the subsequent inspection to be affected with any of the diseases or conditions named in this Order shall be disposed of according to the provisions of this Order.

SEC. 24. (*a*) Carcasses of hogs marked "SUSPECT" on ante-mortem inspection shall be subjected to careful post-mortem inspection.

SEC. 25. (*a*) Carcasses of hogs which show acute and characteristic lesions of either hog cholera or swine plague in any organ or tissue other than the kidneys and lymph glands shall be condemned. Inasmuch as lesion resembling those of hog cholera or swine plague occur in the kidneys and lymph glands of hogs not affected with either hog cholera or swine plague, carcasses of hogs in the kidneys or lymph glands in which any lesions resembling those either of hog cholera or of swine plague appear shall be carefully examined further for corroborative lesions.

(*b*) If on further inspection the carcass shows such lesions in the kidneys or in the lymph glands or in both, accompanied by characteristics lesions in some organ or tissue, all lesions shall be considered as those of hog cholera or swine plague, and the carcass shall be condemned.

(*c*) If the carcass show no indication of either hog cholera or swine plague in any organ or tissue other than in the kidneys or lymph glands, it shall be passed for food.

SEC. 26 (*a*) Carcasses of animals found before evisceration to be affected with anthrax or hemorrhagic septicemia shall not be eviscerated but shall be retained and condemned and immediately tanked or buried in accordance with the provisions of Animal Industry Administrative Order No. 5.

(*b*) The carcass and all parts of it including the head, hoof, horn, hair, viscera and contents, blood, and fat found to be affected with anthrax, or hemorrhagic septicemia, shall be condemned and immediately disposed of in accordance with the provisions of this Order.

(*c*) Carcasses or parts thereof contaminated with anthrax or hemorrhagic septicemia through contact with infected materials or instrument, shall be immediately condemned and disposed of in accordance with these rules and regulations.

(*d*) Those portions of the abattoir, such as the killing floor, wall, posts, flatforms and instruments and clothing of personnel contaminated through contact with any disease-infected object, shall be cleaned and disinfected with the proper disinfectants. The instruments shall be rinsed with clean water before using them again.

SEC. 27. Carcasses of animals affected with, or showing lesions of, any of the following named diseases or conditions shall be condemned:

(*a*) Anthrax
(*b*) Blackleg
(*c*) Hemorrhagic septicemia
(*d*) Pyemia
(*e*) Septicemia
(*f*) Rinderpest
(*g*) Advanced cases of Texas fever
(*h*) Malignant epizootic catarrh
(*i*) Parasitic icterohematuria in sheep
(*j*) Sarcoma and carcinoma
(*k*) Rabies
(*l*) Generalized mela-

nosis, pseudoleukomia, and the like
(*m*) Glanders
(*n*) Swine erysipelas
(*o*) Gas gangrene
(*p*) Tetanus
(*q*) Unhealed vaccine lesion

SEC. 28. All carcasses of animals so infected that the consumption of the meat thereof is liable to give rise to meat poisoning shall be condemned. These include all carcasses showing signs of any of the following:

(*a*) Acute inflammation of the lungs, pleura, pericardium, peritoneum or meninges.

(*b*) Septicemia or pyemia, whether puerperal, traumatic, or without any evident case.

(*c*) Gangrenous or severe hemorrhagic enteritis or gastritis.

(*d*) Acute diffuse metritis or mammitis.

(*e*) Polyarthritis.

(*f*) Phlebitis of the umbilical veins.

(*g*) Traumatic pericarditis.

(*h*) Any acute inflammation, abscess, or suppurating sore, if associated with acute nephritis, fatty and degenerated liver, swollen soft spleen, marked pulmonary hyperemia, general swelling of lymph glands, or diffuse redness or the skin, either singly or in combination.

Immediately after the slaughter of animal showing signs of any of the said diseases, the premises and implements used shall be thoroughly disinfected as prescribed elsewhere in these regulations. The part of any carcass coming in contact with the carcass or any part of the carcass of the infected animal, other than those affected with the disease mentioned in paragraph (*a*) of this section, or with the place where such diseased animal was slaughtered, or with the implements used in the slaughter thereof, before thorough disinfection of such place and implements has been accomplished, or with any other contaminated object shall be immediately removed and condemned.

If the contaminated part is not removed from the carcass within two hours after such contact the whole carcass shall be condemned.

SEC. 29. From the standpoint of meat inspection, necrobacillosis (lip-and-leg ulceration) and actinomycosis may be regarded as a local affection at the beginning, and carcasses in a good state of nutrition, in which the lesions are localized may be passed for food, after removing and condemning those portions affected with necrotic lesions. On the other hand, if emaciation, cloudy swelling of the glandular organs, or enlargement and discoloration of the lymph glands are associated beyond the condition of the localization to a state of toxemia, the entire carcass shall be condemned, being both innutritious and noxious. Septicemia or pyemia may intervene as a complication of the local necrosis, and when present, the carcass shall be condemned in accordance with this order.

SEC. 30. When extensive lesions of caseous lymphadenitis, with or without pleuritic adhesions, are found in the lungs, or several visceral organs contain caseous nodules and the carcass is emaciated, the carcass shall be condemned. When the lesions of caseous lymphadenitis are limited to the superficial glands or to a few nodules in an organ, involving also the adjacent lymph glands, and the carcass is well nourished, the meat may be passed for food after the affected parts are removed and condemned.

SEC. 31. Carcasses showing any degree of icterus with a parenchymatous degeneration or organs, the result of infection or intoxication, and those which show an intensive yellow or greenish-yellow discoloration without evidence of infection or intoxication shall be condemned. Carcasses affected with icteric-like discoloration, the result of conditions other than those before stated in this section, but which lose such discoloration on chilling, may be passed for food, while those which do not lose such discoloration may be passed for sterilization. No carcass retained under this section may be passed for food unless the final inspection thereof is completed under natural light. Carcasses passed for cooking under this section shall not be processed other than by rendering.

SEC. 32. Carcasses which give off the odor of urine or a sexual odor shall be condemned. However, such carcasses may be marked "Passed for Refrigeration" and stored in a refrigerating plant and their final disposal shall be determined by the heating test.

SEC. 33. Carcasses of animals affected with mange or scab in advanced stages, showing cachexia or extensive inflammantion of the flesh, shall be condemned. When the disease is slight, the carcass may be passed after removal of the affected portion.

SEC. 34. Carcasses of hogs affected with urticaria (diamond skin disease) *Tinea tonsurans, Demodex folliculorum,* or *erythema* may be passed after detaching and condemning the affected skin, if the carcass is otherwise fit for food.

SEC. 36. Carcasses of calves, pigs, kids, and lambs which are too immature to produce wholesome meat shall be condemned. Any carcass shall be considered too immature to produce wholesome meat if (*a*) the meat is loose and flabby, has the appearance of being water-soaked, tears easily and can be perforated with the fingers or (*b*) its color is grayish-red; or (*c*) muscular development as a whole is lacking, especially on the upper shank of the leg, where small amounts of serous infiltrates or small edematous patches are sometimes present between the muscles; or (*d*) the tissue, which later develops as the fat capsule of the kidneys, is edematous, dirty yellow or grayish.

SEC. 37. All unborn and stillborn animals shall be condemned.

SEC. 38. Disposition of livers affected with caretonosis, telangeictasis and cirrhosis.

(*a*) Livers affected with carotenosis shall be condemned.

(*b*) Livers about half or more of which show telangeictasis or cirrhosis, shall be condemned.

(*c*) Livers slightly affected may be passed for food after the removal and condemnation of the affected portion.

SEC. 39. *Tuberculosis.*—The following principles are declared for guidance in passing on carcasses affected with tuberculosis:

(*a*) No meat shall be passed for food if it contains tubercle bacilli, or if there is a reasonable possibility that it may contain tubercle bacilli, or if it is impregnated with toxic substance of tuberculosis or associated septic infections.

(*b*) If the tuberculous lesions are localized and not numerous and that there is no evidence of distribution of the bacilli through the blood or by other means to the muscles or to parts that may be eaten with the muscles; and if the animal is well nourished and in good condition, showing that there is no proof or reason to suspect that the flesh is unwholesome, the meat shall be passed for food after the removal of the lesion.

(*c*) Generalized tuberculosis means that the tubercle bacilli have gained entrance into the systemic circulation so that the presence of numerous uniformly distributed tubercles may be found throughout both lungs, spleen, kidneys, bones, joints and sexual glands and in the lymph glands connected with the above mentioned organs and parts, or in splenic, renal, prescapular, popliteal and inguinal glands when several of these organs and parts are coincidentally affected. In generalized tuberculosis, the whole carcass shall be condemned.

(*d*) Localized tuberculosis is one in which the lesions are limitted to a single or several parts or organs of the body without evidence of recent invasion of numerous bacilli into the systemic circulation.

ARTICLE VII—*Disposition of Carcasses of Animals Affected with Tuberculosis*

SEC. 40. The entire carcasses of animals affected with tuberculosis shall be condemned if any of the following conditions occur:

(*a*) When the animal before slaughter was suffering from fever.

(*b*) When there is a tuberculous or other cachexia.

(*c*) The lesions of tuberculosis are generalized, as shown by their presence not only in the usual seats of primary infection but also in parts of the carcass or in organs that may be reached by the tubercle bacilli only when they are carried in the systematic circulation. Tuberculosis lesions in any two of the following mentioned organs are to be accepted as evidence of generalization when they occur in addition to the local tuberculous lesions in the digestive or respiratory tracts, including the lymph glands connected therewith: spleen, kidney, uterus, udder, ovary, testicle, adrenal gland, and brain or spinal cord or their membranes. Numerous tubercles uniformly distributed throughout both lungs also afford evidence of generalization.

(*d*) When the lesions are found in the muscles or intermuscular tissue or bones or joints, or in the body lymph glands as a result of draining the muscles, bones or joints.

(*e*) When the lesions are extensive in one or both body cavities.

(*f*) When the lesions are multiple, acute, and actively progressive as shown by signs of acute inflammation about the lesions, or liquifaction necrosis, or the presence of young tubercles.

(*g*) Any organ or part of a carcass shall be concondemned under any of the following conditions:

aa. When it contains lesion of tuberculosis.

bb. When the lesion is localized but immediately adjacent to the flesh as in the case of tuberculosis of the parietal pleura or peritoneum. In this case not only the membrane or part affected but also the adjacent theracic or abdominal wall shall be condemned.

cc. When it has been contaminated by tuberculous materials through contact with the floor or soiled knife or othewise.

dd. Heads showing lesions of tuberculosis shall be condemned, except that when a head is from a carcass passed for food or for sterilization and the lesions are slight, or calcified, or encapsulated, and are confined to lymph glands in which not more than two glands are involved, the head may be passed for sterilization after the diseased tissues have been removed and condemned.

ee. An organ shall be condemned when the corresponding lymph gland is tuberculous.

Carcasses showing lesions of tuberculosis shall be passed for food when the lesions are slight, localized, and calcified or encapsulated, or are limited to a single or several parts or organs of the body (except as noted above), and there is no evidence of recent invasion of tubercle bacilli in the systemic circulation.

SEC. 41. *Brucellosis.*—Carcasses affected with localized lesion of brucellosis may be passed for food after the affected parts are removed and condemned. Likewise udders from cows officially tagged as Bang's reactor or as mastitis infected cows shall be condemned.

SEC. 42. *Surra.*—Carcasses of animals affected with surra, if in good condition, may be passed for food. If, however, it is edematous and emaciated, the carcass shall be condemned.

SEC. 43. Disposal of carcasses, organs, and parts showing evidence of infestation of tapeworm cysts, and other parasites.

(*a*) Carcasses of catue (including the viscera) infected with tapeworm cysts known as *Cysticercus bovis* shall be condemned if the infection is excessive or if the meat is wattery or discolored. Carcasses shall be considered excessively infected if incisions in various parts of the musculature expose on most of the cut surfaces two or more cysts within an area the size of the palm of the hand.

(*b*) A carcass in which infection with *Cysticercus* bovis is limited to one dead and degenerated cyst may be passed for food after removal and condemnation of the cyst.

(*c*) Carcasses of cattle showing a slight or moderate infection other than that indicated in paragraph (*b*) of this Section but not so extensive as indicated in paragraph (*c*) of this section, as determined by a careful examination of the heart, muscles of mastication, diaphragm and its pillars, tongue and of portions of the carcass rendered visible by the process of dressing, may be passed for food after removal and condemnation of the cysts, with the surrounding tissues: *Provided*, That the carcasses and parts, appropriately identified by retained tags, are held in cold storage at a temperature not higher than —9.5°C. continuously for a period of not less than 10 days: *And provided further*, That boned meat from such carcasses when in boxes, tierces, or like containers, appropriately identified by retained tags, is held at a temperature of not higher than —9.5°C. continuously for a period of not less than 20 days. As an alternative to retention in colt storage as herein provided, such carcasses and parts may be heated throughout to a temperature of at least 60°C.

(*d*) The edible viscera (except the lungs, fat, muscles of the oesophagus, and heart, which shall be disposed of as the carcasses), of carcasses passed for food or for refrigeration under the provisions of paragraph (*c*) of this section may be passed for food without refrigerating or heating: *Provided*, They are found to be free from infestation upon final inspection. The intestines, weasands, and bladders from beef carcasses affected with *Cysticercus bovis* which have been passed for food or for refrigeration, may be used for casings after they have been subjected to the usual methods of preparation and may be passed for such purpose upon completion of the final inspection.

(*e*) The inspection for *Cysticercus bovis* may be omitted in the case of calves under 6 weeks old. The routine inspection of calves over 6 weeks old for *Cysticercus bovis* may be limited to a careful examination of the surface of the heart and such other surfaces as are rendered visible by the process of dressing.

(*f*) Carcasses of hogs affected with tapeworm cysts (*C. cellulosae*) may be passed for sterilization, but if the infestation is excessive the carcass shall be condemned.

(*g*) Fats of carcasses passed for food or for sterilization under the provisions of paragraphs (*c*) and (*f*) of this section may be passed for food provided they are melted at a temperature of not less than 65.6°C.

(*h*) Organs or parts of carcasses infested with hydatid cysts (Echinococcus cysts) shall be condemned. Livers infested with flukes or fringed tapeworms shall be condemned.

(*i*) In the disposal of carcasses, edible organs and parts of carcasses showing evidence of infestation with parasites not transmissible to man such as the celebrales, sarcosporidia, etc., the following general rules shall govern:

aa. If the lesions are localized in such manner and of such character that the parasites and the lesions caused by them may be radically removed, the non-affected portion of the carcass, organ or part of the carcass, may be passed for food after the removal and condemnation of the affected portions.

bb. If an organ, or part of the carcass shows numerous lesions caused by the parasites, or if the character of the infestation is such that a complete extirpation of the parasites and lesions is difficult and uncertainly accomplished, or if the parasitic infestation or invasion renders the organ or parts in any way unfit for food, the affected organ or part shall be condemned.

cc. If the parasites are found to be distributed in a carcass in such a manner or of such character that the removal of the parasites and the lesions caused by them are impracticable, no part of the carcass shall be passed for food.

dd. If the infestation is excessive, the carcass shall be condemned.

ee. If infestation is moderate the carcass may be passed for sterilization, but in case such carcass is not cooked as required in this regulations concerning rendering and sterilization, it shall be condemned.

(*j*) Carcasses of animals found infested with gid bladder worms (*Coenurus celebralis, Multiceps multiceps*) may be passed after condemnation of the affected organ (brain or spinal cord).

SEC. 44. Meat and organs, such as lungs and livers, etc., which have been condemned on account of parasitic infestation or invasion, sexual or urinary odor, and the flesh of immature and unborn animals and animals which have been condemned on account of emaciation, advanced pregnancy and recent parturition, may be utilized at recognized establishments in the manufacture of poultry feed: *Provided*, That such organs and tissues are sterilized by thorough cooking, steam rendering, or dessication under high temperature. If so utilized, such organs and tissues shall be handled and prepared in rooms or places separate and apart from those in which edible products are handled, prepared or stored.

ARTICLE VIII—*Rendering Carcasses and Parts into Lard and Tallow and other Sterilization and disposal.*

SEC. 45. Carcasses and parts passed for sterilization may be rendered into lard or tallow provided such rendering shall be done in the following manner: The lower opening of the tank shall first be securely sealed by an inspector, then the carcasses or parts shall be placed in tank in his presence, after which the upper opening shall be securely sealed by such inspector who shall then see that sufficient force of steam is turned into the tank. The carcasses and parts thereof shall be cooked at a temperature not lower than 104.5°C. for a time sufficient to render them effectually into lard or tallow.

SEC. 46. Estabishments not equipped with steaming tanks for rendering carcasses and parts may render such carcasses or parts in open kettles under the direct supervision of the inspector. Such rendering shall be done at a temperature and for a time sufficient to render the carcasses and parts effectually into lard or tallow, and shall be done only during office hours.

SEC. 47. Carcasses, organs or parts thereof, condemned under the provisions of this Order at an approved establishment which has no facilities for rendering or tanking, shall be denatured with crude carbolic acid, strong creoline solution or other prescribed agents or destroyed by incineration. If such condemned carcasses, organs or parts thereof are not incinerated, they shall be burried not less than one meter deep in the ground within the pemises of the establishment or at any place designated for the purpose under the supervision of the inspector.

ARTICLE IX—*Reports*

SEC. 48. Reports of inspection shall be submitted to the Director of Animal Industry through the veterinarian incharge of the province (thru the Chief, Animal Disease Control Division, if in Manila) on such forms and in such manner as may be prescribed by the Director of Animal Industry.

SEC. 49. Upon discovery of dangerous communicable animal diseases, such as anthrax, rinderpest, tuberculosis, glanders, hog cholera, foot-and-mouth disease, etc., the meat inspector shall at once report the matter to the Veterinarian In-Charge, (to the Director of Animal Industry, if in Manila) indicating the owner, origin, and the location and number of animals affected.

ARTICLE X—*Offenses and Penalties*

SEC. 50. (*a*) It shall be unlawful for any person, firm, corporation, partnership or any agent or employee thereof to give, pay, or offer, directly or indirectly to any inspector authorized to perform any duty prescribed by this regulations, any money or other things of value with intent to influence such inspector in the discharge of his duty as to violate directly or indirectly any provisions of this Order. It shall likewise be unlawful under this regulations for any inspector or other employees engaged in the performance of any duty prescribed under this regulations to accept from any person, firm, corporation or partnership or from any agent or employee of such firm, person, corporation or partnership or from any agent or employee of such firm, person, corporation or partnership, any gift, money or other things of value given with intent to influence his official actions.

(*b*) Any person, either for himself or in behalf of another person, firm, corporation or partnership, who shall slaughter animals which have not been submitted for ante-mortem examination as prescribed in this Order, or who shall store, transport, sell or othewise dispose of for food carcasses, organs or parts thereof which has not been previously inspected and passed or have been found upon inspection to be unfit for human consumption, or who shall contravene or violate any of the provisions of this Order, or who shall falsify, forge, counterfeit, alter, deface or destroy any certificate, pass, tag and other legal papers issued or marks placed by virtue of this Order, shall be liable to prosecution and upon conviction shall suffer the penalty provided in the second paragraph of section 2747 of the Revised Administrative Code (Act 2711) which is a fine of not more than ₱100 or imprisonment of not more than 30 days or both, in the discretion of the court.

ARTICLE XI—*Repealing Provisions*

SEC. 51. All orders, rules and regulations inconsistent with the provisions of this Order are hereby repealed.

ARTICLE XII—*Effectivity*

SEC. 52. This Order shall take effect on September 7, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

MANUEL D. SUMULONG
Director of Animal Industry

BUREAU OF LANDS

GENERAL ADMINISTRATIVE ORDER No. 2–D

June 18, 1954

APPRAISAL OF PUBLIC LANDS, FRIAR LANDS AND THEIR IMPROVEMENTS

SECTION 1. Section 2 of General Administrative Order No. 2 dated November 9, 1948, as amended, is hereby further amended to read as follows:

2. The appraisal of Public Lands including Insular Government Property, Friar Lands, and their improvements, shall be made by a representative of the Bureau of Lands with the assistance of the Municipal or City Treasurer of the Municipality or

City where the land is located and the report of appraisal must be indorsed by the District Land Officer, Provincial Land Officer or Inspector-in-Charge of a sub-office concerned, except the appraisal of improvements thereon when the appraisal made by the representative of the Bureau of Lands is put at issue. In such cases, the appraisal shall be made by a Committee composed of the District Land Officer, or in the province where there is no District Land Officer, the Provincial Land Officer or Inspector-in-Charge concerned, as Chairman, the Provincial Agricultural Supervisor and the Municipal Treasurer of the province and the municipality, respectively, where the land is situated, as members. In case the improvements to be appraised are within the Friar Lands Estates, the Chairman of the Committee shall be the Friar Lands Agent concerned and the members shall also be the Provincial Agricultural Supervisor and the Municipal Treasurer of the municipality where the land is situated. However, when the public lands and/or friar lands are located in a chartered city, the third member of the committee shall be the City Assessor or whoever is in charge of the assessment of real property in the City.

SEC. 2. This amendment shall take effect immediately.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Concurred in:

JAIME HERNANDEZ
Secretary of Finance

LANDS ADMINISTRATIVE ORDER NO. R–3–1

August 12, 1954

AMENDMENT TO THE RULES AND REGULATIONS GOVERNING THE ACQUISITION AND DISPOSITION OF LANDED ESTATES.

Pursuant to the provisions of section 4, Article XIII to the Constitution of the Philippines, section 79 (B), of the Revised Administrative Code, and Executive Order No. 376, dated November 28, 1950, the following amendments to the rules and regulations governing the acquisition and disposition of private estates are hereby promulgated for the information and guidance of all concerned:

SECTION 1. Section 4 of Lands Administrative Order No. R–3 is hereby amended to read as follows:

"4. *Subdivision of the estate acquired.*—After its acquisition, the estate shall be subdivided into small lots. In cases of estates acquired for residential purposes, each subdivision lot shall contain an area of not less than 180 square meters but not exceeding 500 square meters. Where, however, there are buildings of strong materials and/or improvements of permanent character existing on the premises at the time of the acquisition of the estate, the subdivision thereof in conformity with the location of the said improvements may be allowed. In case of farm lots, the subdivision shall as much as possible be in conformity with the actual occupation of the occupant thereof and his improvements existing thereon; *Provided*, That the use to which the land is devoted shall be taken into consideration in the determination of the size of each farm lot, but in no case shall the area of each lot exceed 10 hectares.

SEC. 2. Section 7 of Lands Administrative Order No. R–3 is hereby amended to read as follows:

"7. *Persons qualified to purchase; Number of lots granted.*—The bona fide tenant or occupant of a lot or, in the absence thereof any person of legal age, or head of a family who is landless and not otherwise disqualified to acquire and own lands in the Philippines may be allowed to purchase not more than one home lot and/or one farm lot. In case, however, the area actually occupied by the tenant is more than the maximum allowed in paragraph 4 hereof, he may be allowed to acquire the whole lot provided that he has not sublet any portion thereof. If he has sublet a portion thereof, and that portion, is to be sold to the sublessee, the latter may be required to pay for the reasonable value of the improvements, if any, that might have been introduced by the bona fide tenant or the proportionate cost, if any, that the bona fide tenant might have paid to the previous tenant or occupant of the land. Any obligation which the vendee may be required to pay in accordance herewith shall be settled within 6 months from the time he is duly notified of the amount due; otherwise, he shall be deemed to have forfeited his rights to purchase the portion occupied by him and the said portion shall be declared vacant."

SEC. 3. Section 8 of the Lands Administrative Order No. R–3 is hereby amended to read as follows:

"8. *Bona fide tenant; sub-tenant or sublessee; occupant; defind.*—For the purpose of these regulation, a bona fide tenant is in an estate acquired by the government is one who in good faith, occupies a certain area thereof by virtue of an express or implied contact of tenancy had with the former owner of the estates from whom it was acquired by the Government provided that with respect, to the Tambobong Estate in Malabon, Rizal, and the Ntra. Sra. de Guia Estate in Manila, the owners referred to herein are understood to be the Roman Catholic Archbishop of Manila or any of his instrumentalities; and in the

case of the Buenavista Estate in Bulacan, the San Juan de Dios Hospital. A sub-tenant or sublessee is one who, with or without paying any rental to the lessee of a certain area of the estate, has been allowed by the latter, under an express or implied agreement, to occupy the said area for a fix or unspecified period. An occupant is one who, at the time of the acquisition of the estate by the Government was found occupying the same with or without relationship of tenancy with the former owner of the estate or with the lessee of the latter."

SEC. 4. Section 9 of Lands Administrative Order No. R–3 is hereby amended to read as follows:

"9. *Procedure in the disposition of the lots.*— Lots in estates acquired by the Government shall be disposed of through private sale to bona fide tenants or occupants thereof. In the absence of such persons, or in the event of their disqualification under the laws and regulations in force, the lot shall be declared vacant for the purpose of these regulations and shall be sold at public auction through oral bidding to the highest bidder, in which event, the procedure prescribed in paragraph 28 of Lands Administrative Order No. 7–1 shall be observed as far as it is consistent herewith; *Provided, however,* That only persons not otherwise disqualified and not already owing a home lot in case of urban lands, or not already owing a parcel of land which if added to the area to be purchased will exceed 24 hectares, in case of farm lands, shall be allowed to bid."

SEC. 5. This regulation shall take effect 30 days following its publication in the *Official Gazette.*

Approved, August 12, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

RECOMMENDED BY:

ZOILO CASTRILLO
Director of Lands

Department of Public Works and Communications

BUREAU OF TELECOMMUNICATIONS

ADMINISTRATIVE ORDER NO. 18

August 4, 1954

ADMINISTRATIVE ORDER NO. 3, DATED JULY 21, 1950, AMENDMENT TO

In cases where certain officials of the Executive Office and the various Executive Departments of the National Government are required by their respective Chiefs to have a telephone installed at their residences, so that they may be called to report to office at any time for special or overtime work, especially outside of the regular office hours, no charge for materials used in connection with such telephone installation shall be collected; *Provided,* that any requests for such installation: (1) shall have been duly certified to by the Chiefs of the offices concerned as absolutely necesary in the performance of the official duties of such officials and (2) that due to nature of their duties they are subject at any time, especially outside of the regular office hours, to be called and report for duty.

This is an exception to the requirement for payment of charges for materials used in installation, such as wires in excess of 750 feet provided for under Administrative Order No. 3, series of 1950, mentioned above.

This Administrative Order is effective as of March 1, 1954.

F. CUADERNO
Director of Telecommunications

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

ADMINISTRATIVE ORDER NO. 19

August 13, 1954

NOMINAL RATE OF THIRTY CENTAVOS (₱0.30) ON MESSAGES RELATING TO MALARIA CONTROL ACTIVITIES—

In the interest of public health, telegrams filed by officials or by duly authorized representatives of the Division of Malaria, including those in the field, relating to activities connected with the control of malaria, shall, as a temporary measure, be accepted at the rate of ₱0.30 per message, subject to the following conditions:

(1) That each of such telegrams shall contain not more than 30 words in length, and that in case the message contains more than 30 words, every word in excess of 30 shall be charged for at the rate of ₱0.15 per word;

(2) That only two telegrams of this nature can be filed daily at the nominal rate of ₱0.30 from one telegraph office to another, and that telegrams that may be filed in excess of the two telegrams herein allowed shall be treated as full-rate telegrams and shall, therefore, be charged accordingly;

(3) That such telegrams shall deal exclusively on matters concerning the control of malaria and shall be framed in the fewest words possible;

(4) That each of such telegrams shall be filed in duplicate in order to facilitate the submission of bills to the Division of Malaria, Department of Health;

(5) That each of such telegrams shall carry the indicator "MALARIA" before the address and included in the count of chargeable words;

(6) That each of such telegrams shall be endorsed "O.B Chargeable to Account, Division of Malaria" followed by the signature of the official authorized to file the same;

(7) That a monthly Statement of Acount shall be prepared by the Accounting Officer of the Bureau of Telecommunications and transmitted to the Division of Malaria, Department of Health for settlement; and

(8) That this arrangement is only temporary in nature and shall be discontinued whenever full-rate telegrams are being delayed through the congestion of traffic.

J. S. ALFONSO
Acting Director

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

CIRCULAR
(Unnumbered)

August 21, 1954

ANTI-TUBERCULOSIS EDUCATIONAL AND FUND DRIVE FOR 1954

The following letter dated August 13, 1954 has been received from our Department:

> "Pursuant to Proclamation No. 43 of the President of the Philippines dated July 5, 1954, and in compliance with the request made in the letter of the Executive Secretary, as Chairman, National Government Division 1954 Anti T. B. Educational and Fund Drive, dated July 31, 1954, please be advised that the amount of ₱2,000 is allocated to your Bureau.
>
> "Fifty-five booklets or 550 receipts Nos. 420501 to 421050 are herewith forwarded to you.
>
> "It is suggested that in order to cover the quota, your Cashier be authorized to deduct from all officials and employees of your Bureau the amount equivalent to ½ of 1 per cent of their monthly salary."

Officials and employees of this bureau are urged to give their whole-hearted cooperation and support to the campaign, in order that we may be able to cover our quota.

In each telegraph or radio station, the Chief Operator or Operator-in-Charge is hereby designated to take charge of collecting the contributions of the employees therein and of remitting the amount by *money order payable to the Philippine Tuberculosis Society* or other means to the Administrative Officer, Bureau of Telecommunications, Manila. The remittance should be accompanied by a list showing the amount contributed by each employee. Official receipts of the Philippine Tuberculosis Society will be sent later.

In the Central Office, each Chief of Division shall supervise the collections in his division with a view to raising as big an amount as possible. The collections should be turned over to the Administrative Officer not later than September 30, 1954.

J. S. ALFONSO
Acting Director of Telecommunications

CIRCULAR
(Unnumbered)

August 25, 1954

PUNCTUALITY IN ATTENDANCE

The following memorandum dated August 23, 1954, has been received from the Department:

> "It has been observed that some officials including chief of divisions as well as employees of the bureaus and offices under this Department do not arrive in their offices on time. The President in his unannounced visit in this Department, this morning, called the attention of the undersigned to that deplorable fact. It is indeed very embarrassing on the part of this Department, that when the Chief Executive makes, as he often makes, surprise visits at our offices many of the officials and employees are not yet in their respective seats.
>
> "It is, therefore, desired that all officials and employees of the bureaus concerned be enjoined, for the good of the service, to observe punctuality in their attendance."

Officials and employees of this bureau are again enjoined to be punctual in their attendance. Chiefs of divisions and sections should set examples to their subordinates by coming to the office on time. Attention is invited to Office Order No. 8 dated April 10, 1951, and to Unnumbered Circular dated October 10, 1952, particularly to the following paragraph of the latter circular:

> "In order that office attendance of employees may be properly checked, a time clerk should be designated in each division whose duty shall be to check the time cards regularly everyday and report to the Chief of Division those who have been late for five minutes or more, or who have failed to ring in or out on the bundy clock. A form letter or memorandum, to be signed by the Chief of Division should be devised for the purpose of requiring an explanation for the irregularity."

F. CUADERNO
Director of Telecommunications

CIRCULAR
(Unnumbered)

September 6, 1954

LOSS OF TREASURY WARRANTS

The loss of the following treasury warrants has been reported by the Accounting Officer of the Bureau of Telecommunications:

1. T/W Number 1504023 for ₱20.40, dated June 22, 1951 in favor of Operator in charge, Iligan City.
2. T/W Number 2216336 for ₱56.00, dated May 9, 1952 in favor of Operator in charge, Iligan City.
3. T/W Number 2216337 for ₱92.00, dated May 9, 1952 in favor of Operator in charge, Iligan City.
4. T/W Number 2216338 for ₱188.80, dated May 9, 1952, in favor of Operator in charge, Iligan City.
5. T/W Number 2216339 for ₱67.60, dated May 9, 1952 in favor of Operator in charge, Iligan City.
6. T/W Number 3598052 for ₱120.00, dated May 31, 1954 in favor of Gualberto Perez.

Chief Operators, Operators-in-charge and others concerned shall take note of the lost treasury warrants and see to it that they are not accepted in their transactions under any circumstances. Any government official or employee who finds them in the possession of any person is requested to notify this Office immediately.

F. CUADERNO
Director of Telecommunications

Department of Commerce and Industry

BUREAU OF COMMERCE

COMMERCE ADMINISTRATIVE ORDER NO. 11

August 31, 1954

AUTHORIZING THE DIRECTOR OF COMMERCE TO COLLECT THE SUM OF ₱0.20 FOR EVERY SET OF BLANK FORMS OF APPLICATIONS FOR ALL THE CERTIFICATES OF REGISTRATION AND/OR LICENSES ISSUED BY THE TRADE REGULATIONS DIVISION OF THE BUREAU OF COMMERCE.

SECTION 1. In view of the limited funds allotted to the Bureau of Commerce, and pursuant to the provisions of sections 79(B) and 572 of the Revised Administrative Code, the Director of Commerce is hereby authorized to collect the sum of ₱0.20 for the issuance of every set of blank forms of application for the registration and/or licensing of the following:

1. Real Estate brokers and salesmen, merchandise, ship and money or exchange brokers pursuant to section 3(E) of Act No. 2728, as amended by Acts Nos. 3715 and 3969;
2. Firm names or business names or styles under Act No. 3883, as amended by Act No. 4147 and Republic Act No. 863; and
3. Private Merchants pursuant to the provisions of the Code of Commerce as modified by Act No. 2728, section 3.

SEC. 2. Without prejudice to accounting and auditing rules and regulations, any and all amounts collected in accordance with the preceding section shall be used by the Bureau of Commerce exclusively for the purchase of needed supplies and materials for the mimeographing or printing of said blank forms, and for other costs or expenses that may be incurred therefor.

SEC. 3. All provisions of Commerce Administrative orders, rules and regulations or part thereof which are inconsistent herewith are hereby repealed.

SEC. 4. This Commerce Administrative Order shall take effect on the date of its publication in the *Official Gazette*.

OSCAR LEDESMA
Secretary of Commerce and Industry

Recommended by:

BONIFACIO A. QUIAOIT
Director of Commerce

Civil Aeronautics Administration

ADMINISTRATIVE ORDER NO. 42
Series of 1954

SECTION 1. Paragraph 1.1.1 of the Administrative Order No. 19, promulgated on August 10, 1953, is hereby amended to read as follows:

"1.1.1 *Day Marking.*—Unserviceability Markings shall be displayed on the movement area to indicate any area unfit for the movement of aircraft. In the case or runways and taxiways, an Unserviceability Marking shall be displayed at each end of the unserviceable portion.

Other areas should be delineated by the use of markers, such as shapes or flags, and marked by an Unserviceability Marking placed near the centre of the area.

The Unserviceability Marking shall consist of a cross and shall be of a single conspicuous colour, preferably white."

SEC. 2. This shall take effect upon approval.

URBANO B. CALDOZA
Administrator

Approved, August 11, 1954.

OSCAR LEDESMA
Secretary of Commerce and Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

September, 1954

Guillermo Fonacier as Vice Consul of the Republic of the Philippines, September 1.

Vicente Leido as Provincial Assessor of Mindoro Oriental, September 4.

Tomas G. de Castro as Envoy Extraordinary and Minister Plenipotentiary of the Republic of the Philippines, September 8.

Vicente Birao as Fifth Assistant Provincial Fiscal of Cebu, September 8.

Antolin Oreta as Member of the Board of Directors of the Metropolitan Water District, September 10.

Hilario B. de Castro as Member of the Board of Directors of the Agricultural Credit and Cooperative Financing Administration, September 10.

Jose San Juan as Register of Deeds of Zamboanga del Sur, September 14.

Designations by the President

Jose Paez as Acting Chairman and Angel Nakpil, Andres Hizon, Jose Madrigal, Francisco Ortigas, and Eugenio Puyat as Acting Members of the National Planning Commission, September 1.

Juan G. Paraiso as Acting Commisisoner of the Bureau of Public Highways, September 3.

Eugenio Cruz as Acting Director of the Bureau of Plant Industry, September 3.

Juan F. Hilario as Acting Member of the Board of Governors of the Agricultural Credit and Cooperative Financing Administration, September 6.

Conrado Benitez as Acting Member of the Community Development Planning Council, September 8.

Joaquin E. Chipeco as Acting Member of the Home Financing Commission, September 14.

Maximo Calalang as Acting Member of the Board of Directors of the National Rice and Corn Corporation, September 14.

Maximo Kalaw as Acting Member of the Community Development Planning Council, September 14.

Col. Osmundo Mondoñedo and Col. Jacinto Gavino as Acting Members of the Board of Directors of the National Rice and Corn Corporation, September 15.

Raul S. Manglapus as Acting Member of the Board of Directors of the Metropolitan Water District, September 15.

Primitivo Tugade as Acting Chairman of the Board of Directors of the Philippine Tobacco Administration, September 16.

Angel E. Nakpil as Acting Member of the Board of Directors of the People's Homesite and Housing Corporation, September 16.

Digno Alba as Acting Member of the Board on Textbooks, September 17.

Julian E. Lustre as Acting City Attorney of Quezon City, September 21.

Emigdio Tanjuatco and Felipe Enage as Acting Members of the Anti-Dummy Board, September 25.

HISTORICAL PAPERS AND DOCUMENTS

ADDRESS BY RAMON MAGSAYSAY, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, AT THE MANILA CONFERENCE OF 1954, SEPTEMBER 6, 1954

YOUR EXCELLENCIES:

ON BEHALF of the people and Government of the Republic of the Philippines, I welcome you to this important conference.

We rejoice that you have honored our invitation to meet in Manila. We trust that here, in the capital city of a country that value freedom and has shown the will to fight for it, you will find inspiration to plan boldly the effective defense of freedom in our part of the world.

Ours is a nation whose love of peace and devotion to freedom have been tested by suffering and sacrifice. We want peace because we have borne the cruelties of war. But stronger than our fear of war is our love of freedom. In the past we have stood up to be counted; in the future we propose to do the same. For the present we regard with high hope this conference of like-minded states that are ready to stand up and be counted in the struggle against aggression and tyranny.

We are met today for no aggressive purpose. We are met here to consider how best we may act jointly to deter aggression or to repel aggression. It is clear that we shall deter aggression only if we declare our readiness to act swiftly to check it by every means in our power, including the use of armed force. And we shall repel aggression only if our planning includes realistic procedures for organizing and carrying out measures for military, political, and economic cooperation, both for long term and for emergency purposes.

This conference will have contributed signally to the maintenance of international peace and security if the participating states adhere closely to three objectives; namely discouragement of aggression before it occurs, early and sound organization of counter measures against aggression when it threatens, and immediate use of such measures if it occurs.

Much has been said about co-existence. In this age of atomic and hydrogen weapons the case for peaceful co-existence between the Free World and the Communist world seems to be on the surface an attractive one. But what kind of co-existence? Our kind, in which free nations of so many different ways of life live today in peaceful co-operation? Or the Communist kind, which means meek

submission to the systematic destruction of our free way of life? On this matter we cannot afford to deceive ourselves. We know enough of the tactics and objectives of Communism from its own words and actions to understand clearly that the only way free nations can co-exist with aggressive Communism is to keep strong and remain vigilant. If we put down our guard and become weak and allow ourselves to be deceived, we may achieve co-existence of course, but of the kind that obtains between the lion and the lamb—with the lamb inside the lion.

It is the task of this conference to help build an adequate system of defense around an exposed and threatened sector of the Free World. On the success of this conference may well depend the peace of Asia in the next ten years and the future of freedom in the world for the next thousand years.

The task is formidable and time is running short. I invite you, therefore, to this joint undertaking as one that is worthy of the best and highest that is in us to give.

May the divine wisdom of the Almighty guide your deliberations to achieve peace and freedom for all.

OPENING STATEMENT BY THE HONORABLE JOHN FOSTER DULLES AT THE CONVOCATION OF THE UNITED STATES-PHILIPPINE SECURITY COUNCIL, SEPTEMBER 4, 1954

I CANNOT sit down to talk with my Philippine friends without first referring to our close ties over the past 55 years—ties which my Government views as stronger and closer than ever before, because now they are forged out of sovereign equality. Both in war and in peace we have benefitted from being associated, and that association has grown into a rare example of true friendship between fully independent, freedom-loving peoples.

This relationship offers us the best possible basis for co-operation to meet the new danger which has arisen since the end of World War II in Asia. I know that you are all familiar with the grave problems facing us in this area of the world. Communism gained control of the Vietminh revolution, and now its leaders threaten to take over all of Indochina. Red China has made open threats to invade Formosa, and some free Asian countries are as yet hesitant to take a stand against aggressive Communism. The situation is fraught with peril to the democratic way of life in Asia and throughout the world.

The United States-Philippine Mutual Defense Treaty, in the formulation of which I played a part, and under which this Council has been established, is an important link in the defense system of the Free World in Asia. It should be so strong as to be unbreakable.

I have been told that concern has been expressed that the United States might not come to the aid of your country in the event it were subjected to aggression. I wish to state in the most emphatic terms that the United States will honor fully its commitments under the Mutual Defense Treaty. If the Philippines were attacked, the United States would act immediately. We expect the Philippines to contribute to its own security to the extent of its capabilities. To that would be added United States air, naval, and logistical support. The United States will take all practicable measures to maintain the security of the Philippines against external attack. The United States intends to maintain and use its air and naval bases in the Philippines. These provide concrete evidence of United States ability and intention to take necessary counter-measures. The United States emphasizes the fact that in the event of war, its power to take the offensive against points of its choosing will, in conjunction with the efforts of the Philippine forces, provide a major contribution to the security of the Philippines.

The President of the United States has ordered the Seventh Fleet to protect Formosa from invasion by Communist aggressors. In the case of the Philippines, no specific orders are required; our forces would automatically react.

REMARKS OF VICE-PRESIDENT AND CONCURRENTLY SECRETARY OF FOREIGN AFFAIRS CARLOS P. GARCIA UPON HIS ELECTION AS CHAIRMAN, MANILA CONFERENCE OF 1954

EXCELLENCIES:

ONE THING I must do before I proceed further, and that is to thank you from the bottom of my heart for the high honor and confidence you have accorded me in electing me chairman of the Manila Conference of 1954. In all candor I must confess that I feel unequal to the tremendous responsibility of presiding over a conference of such historic significance and importance as this. But in all humility, I accept it, trusting that my illustrious colleagues gathered here will make due allowance for my deficiencies and help me steer the deliberations of this body to a successful conclusion. With divine guidance, with a sincere spirit of cooperation and a profound sense of dedication to the cause of peace and freedom pervading in this Conference, we cannot fail, we must not fail.

The eyes of the world are focussed on us today. The free peoples in other parts of the world wait for us to forge a security organization similar to those by which they are now protected. The potential aggressors anticipate our failure and are seeking to promote it by every means within their power. The so-called neutral powers mark our motives and our every move with skepticism. And the people of our own

respective countries hang on the words that shall be spoken and on the actions that shall be taken here, knowing that their fate as free men will be decided by this Conference.

As our responsibility is great, so I am certain that the purpose which animates us is equally strong. Our aim is to establish a collective defense organization with a two-fold objective: to deter any potential aggressor by a solemn affirmation of our solidarity, and to repel an actual aggressor, individually and collectively, through the instant application of effective counter-measures, including the use of armed force.

Supporting these two primary objectives is a general endeavor, by joint or separate action, to strengthen our capacity to resist armed attack. This will involve a pledge to respect the sovereign equality of states, to promote the freedom of peoples, to strengthen their free institutions, and to improve their social well-being and economic livelihood.

These are the objectives of this conference. Only in the measure that we achieve them shall we ensure the effective defense of peace and freedom in a part of the world where they are in gravest jeopardy.

Thus, if we are to set up for Southeast Asia and the Southwest Pacific a kind of organization that will captivate the faith and imagination of the Asian peoples and draw them into the proposed organization, if we are to consolidate ourselves into one compact defensive unit that can give a sense of security and safety and impart a conviction among members and non-members of the immediacy and effectiveness of assistance in case of aggression, if we are to start a wave of thinking and feeling in this part of the world which will encourage the affiliation of countries at present still uncommitted, let us establish a collective defense organization endowed with the capacity for swift and effective action, taking into account the realities of modern warfare.

Let my words in these brief opening remarks be an invocation to the Almighty, Who guides the destiny of men and nations, that He may illumine our way, bless our deliberations, and fill us with infinite grace. I thank you.

JOINT COMMUNIQUE OF THE UNITED STATES-PHILIPPINE COUNCIL FOR IMMEDIATE RELEASE, SEPTEMBER 4, 1954

A MEETING of the United States–Philippine Council established on June 23, 1954, between the two Governments pursuant to the provisions of the Mutual Defense Treaty of August 30, 1951, was held at Malacañang today.

Vice-President and Secretary of Foreign Affairs Carlos P. Garcia and Secretary of State John Foster Dulles exchanged

views on the threat to the free countries of Asia, with especial emphasis on defense of the Philippines.

They agreed that in view of the developments in Southeast Asia the defense of the Philippines requires that the Armed Forces of the Philippines be strengthened through cooperative efforts. This is to be accomplished primarily through a balanced strengthening, reorganization, and modernization of the Ground Forces of the Philippines and is to be undertaken with U. S. assistance. Secretary Dulles stated that further consideration was being given by the Department of Defense to the proposal to develop the Philippine Navy and Air Force.

The Philippine Government presented specific proposals for the strengthening of its armed forces for external defense, including a plan to reorganize its army on a four-division force basis. The United States concurred in the necessity for achieving this objective. Secretary Dulles stated that the United States would furnish the major portion of the military material requirements for such an expansion of the army and would search for means to assist the Philippines toward meeting the foreign exchange and other burdens occasioned thereby.

The necessity for an adequate civil defense was also indicated by the Philippine Government and was fully recognized and appreciated by both parties. Secretary Dulles said the United States would cooperate through existing facilities to aid in the establishment of a civil defense organization.

In response to a Philippine request that the United States place off-shore procurement orders in the Philippines, Secretary Dulles said that the appropriate agencies of the United States Government would be willing to consider specific requests for the placement orders for such goods and services as can be economically obtained in the Philippines.

In the course of the Council Meeting, Secretary Dulles reiterated the intention of the United States, in coordination with the Government and Armed Forces of the Philippines, to ensure the defense of the Philippines against aggression. The sense of Secretary Dulles' remarks to this effect is to be incorporated in a note to the Government of the Philippines. In this connection, Secretary Dulles said, "I wish to state in the most emphatic terms that the United States will honor fully its commitments under the Mutual Defense Treaty. If the Philippines were attacked, the United States would act immediately." Agreement was reached on measures to effect close coordination in U. S. and Philippine efforts.

These agreements demonstrate the close relations between the United States and the Philippines, the firmness and unity of purpose, and the close coordination and harmony which is being achieved through the Philippine-United States Council

of Foreign Ministers. Further coordinating and implementing details will be effected between the respective military representatives and their subordinate commanders.

PRESIDENT MAGSAYSAY'S SPEECH BEFORE MANILA CONFERENCE DELEGATES AT STATE DINNER, SEPTEMBER 8, 1954

YOUR EXCELLENCIES, LADIES AND GENTLEMEN:

AFTER three days of your listening to each other, it really must be a welcome change for you to hear someone else and one who will not argue with you. In fact, there can be no argument, for I agree with you that you have *all* done a splendid job. On this point I am sure none of you will debate with me.

The Manila Conference of 1954 now belongs to history. You have forged a treaty that the perspective of time will show has only one purpose: to guarantee freedom and to preserve peace. You have thus fortified the ramparts of Democracy in Asia. You have steeled the hearts of all free men.

I ask you, ladies and gentlemen, to join me in a toast which is the best tribute we can pay our honored guests tonight. Let us toast to Peace and Freedom—*that* peace which is the objective of Democracy's crusade and *that* freedom without which there can be no peace.

To Freedom and to Peace!

* * *

TRANSCRIPT OF THE EXTEMPORANEOUS RESPONSE OF U. S. SECRETARY OF STATE JOHN FOSTER DULLES AT THE STATE DINNER

MR. PRESIDENT:

AS MY GOVERNMENT'S representative here tonight, I wish to express my very deep appreciation not only for the hospitality which your Government has shown us, but for the inspiration which your Government has given us. And if I may say, sir, I believe that the success of the conference that we held here was because of you, because you stand here as a symbol recognized by all the world and for what this symbol means for that future peace and freedom which you have given as our toast.

You are a man of deeds and of few words. Unfortunately, those who have been cast with the diplomatic career are too often of many words and few deeds. But tonight, at least, I would probably say a few words and I will ask this assembled group to rise and drink a toast, first, for what I think will always be known to history as the Manila Pact, and, second, to the Godfather of that Pact—President Magsaysay.

U.S. STATE SECRETARY JOHN FOSTER DULLES' NOTE TO VICE PRESIDENT AND FOREIGN AFFAIRS SECRETARY CARLOS P. GARCIA, SEPTEMBER 9, 1954

AMERICAN EMBASSY
Manila, September 7, 1954

EXCELLENCY:

I HAVE the honor to refer to the meeting of the Council of Ministers under the Mutual Defense Treaty between the Philippines and the United States which was held in Manila on September 4, 1954. In response to your words of welcome, I gave expression to the intimacy of our relationship and to the practical consequences which derive therefrom. Under our Mutual Defense Treaty and related actions, there have resulted air and naval dispositions of the United States in the Philippines such that an armed attack on the Philippines could not but be also an attack upon the military forces of the United States. As between our two nations, it is no legal fiction to say that an attack on one is an attack on both. It is a reality that an attack on the Philippines is an attack also on the United States. In the light of those facts, I made the following statements which I am glad to record:

> "I wish to state in the most emphatic terms that the United States will honor fully its commitments under the Mutual Defense Treaty. If the Philippines were attacked, the United States would act immediately. We expect the Philippines to contribute to its own security to the extent of its capabilities. To that would be added United States air naval, and logistical support. The United States will take all practicable measures to maintain the security of the Philippines against external attack. The United States intends to maintain and use its air and naval bases in the Philippines. These provide concrete evidence of United States ability and intention to take necessary counter-measures. The United States emphasizes the fact that in the event of war, its power to take the offensive against points of its choosing will, in conjunction with the efforts of the Philippine forces, provide a major contribution to the security of the Philippines.
>
> "The President of the United States has ordered the Seventh Fleet to protect Formosa from invasion by communist aggressors. In the case of the Philippines, no specific orders are required; our forces would automatically react."

The foregoing statements were not made lightly. They were made soberly in the light of the fact that our two countries have deliberately chosen to work together with such intimacy and with such integration of our effort that an aggressor could not, if he wished, disentangle us and attack the Philippines without attacking also the United States with all the consequences that this would imply.

I feel, Your Excellency, that the Conference we have concluded has been most fruitful and in the best tradition of the

relationship between your country and mine. The way is now clear for us to proceed with our utmost energy to the difficult tasks which lie ahead.

Accept, Excellency, the renewed assurances of my highest consideration.

(Sgd.) JOHN FOSTER DULLES

PRESS STATEMENT BY PRESIDENT RAMON MAGSAYSAY, SEPTEMBER 9, 1954

DECISIVE steps have been taken in the past several days to strengthen the security of the Philippines and of the entire area of Southeast Asia and the Southwest Pacific.

Last Saturday, the 4th of September, the United States-Philippine Council met and agreed that the armed forces of the Philippines should be strengthened through the "cooperative efforts" of the two countries. On that occasion, Secretary of State John Foster Dulles reaffirmed in the most emphatic terms the intention of the United States to "honor fully its commitments under the Mutual Defense Treaty."

"If the Philippines were attacked," Mr. Dulles declared, "the United States would act immediately." He also said that in case of attack on the Philippines the American forces "would automatically react."

This declaration has since been affirmed in a formal exchange of notes between the two governments. In his note dated the 7th of September and released for publication today, Mr. Dulles states categorically that "an attack on the Philippines is an attack also on the United States . . . . with all the consequences that this would imply" and repeats the above-quoted statements. Agreement was also reached between our two governments on specific proposals made by the Philippine Government to strengthen its armed forces for external defense.

On Wednesday, the 8th of September, the Manila Conference of 1954 adopted the Southeast Asia Collective Defense Treaty and the Pacific Charter originally proposed by the Philippines. The Treaty binds the Governments and peoples of Australia, France, New Zealand, Pakistan, Thailand, the United Kingdom, the United States, and the Philippines to take collective action against aggression aimed at any one of them.

Together with the collective security arrangements of the United Nations, these two treaties now form a powerful bulwark for our country against Communist aggression or aggression from any source whatever.

Thus, by means of bilateral and multilateral agreements, the security of the Philippines has been greatly enhanced.

To understand why it has been necessary to enter into these agreements, we need only recall that the Philippines is next door to an active war front, the Formosa area, and is very near also to what we may describe as the passive war front in Korea. In addition, we have to take into account the danger that continues to confront the Indo-China territories. We have to consider all these against the hard fact that the aggressive thrust of the new Communist imperialism is being maintained all over the world.

To meet this danger to our security, we are cooperating with like-minded nations in the task of building in Asia a defense-in-depth for freedom and peace. The Manila Conference of 1954 was held with this purpose in mind.

To deter aggression, or to repel it if it should occur, we need adequate military strength, organized for quick collective action. The Manila Pact provides for effective, united military action in the event of aggression against any of the parties.

To discourage political and economic subversion, or to counter it if it should be attempted, we are called upon to make a concerted effort to promote the independence and prosperity of the peoples living in the Treaty area. The Treaty and the Pacific Charter both recognize the importance of promoting self-determination and economic well-being in this area.

The military provisions of the Treaty constitute the armor designed to protect the area from aggression. The provisions on economic development and self-determination, formulated in accordance with the principles enshrined in the Pacific Charter, are the heart and soul that give the Treaty life and meaning for the peoples of Asia, and for all other peoples who believe with them that the freedom and equality of nations are the most stable foundation of peace.

The free world does not want war. Indeed, the purpose of the Manila Pact is to help make certain that no power in Asia will ever again be tempted to endanger the peace by the hope of easy gains and cheap victories. This is also the aim of the North Atlantic Treaty, the Rio Pact, the United States-Philippine Mutual Defense Treaty, and all the other links in the great network of defensive arrangements which the community of free nations is building throughout the world.

Peace is the common objective of all these defensive alliances. They are designed to deter aggression, to discourage recourse to war, to confine the contest between the Free World and the Communist world to a peaceful competition for the hearts and minds of men.

The community of free nations has the human and material resources as well as the moral and spiritual strength to

win such a contest. United on the basis of the equal rights and self-determination of peoples, they can stand up to any challenge from any source.

Bound together to act quickly and effectively in their common defense, the Powers signatory to the Manila Treaty can help to deter aggression and strengthen the structure of peace all over the world.

By these treaties we provoke or threaten no one. Their sole purpose is defense. Through them we give notice to any potential aggressor that if he attacks any one of us we shall not stand alone.

Through the Manila Pact and the Pacific Charter, we give assurance to our sister nations in Southeast Asia that we do not seek to defend colonialism in Asia but rather to liquidate it as speedily as possible by methods of free consent.

Given these two assurances, the other free states of Asia can find nothing objectionable in the Manila Treaty and the Pacific Charter. We would like them to know that they would find a warm and fraternal welcome in the organization.

Committed to a joint undertaking to promote and safeguard the independence and prosperity of all like-minded peoples, we can win and hold the allegiance of the majority of mankind, and thus help to establish the universal rule of law, justice, and freedom blueprinted in the Charter of the United Nations.

THE PRESIDENT WARNS AGAINST WAR-MONGERS; ALLAYS FALSE WAR FEARS, September 11, 1954

IT is reported from the provinces that wild rumors of war being circulated there are causing fear and confusion among our people. These rumors, obviously, are completely false and malicious. They must be stopped because they are harmful and costly to the people and to the nation.

The truth is, thanks to such measures as our new defense pact, there is less danger of war today than there has been for many months. And as the free nations strengthen their defenses the danger of war will grow even less. Aggressors attack only when the victim shows weakness.

Our people should understand that their government has the responsibility and the means to warn them immediately of any danger to the nation's peace and security. If any crisis should ever arise, the people will hear of it quickly from official sources—not from market place gossip.

For our own protection we should also understand what is behind these rumors—who starts them, who spreads them, and what they are supposed to accomplish.

World Communism did not like the conference which took place here last week. They knew the results would make

their aggressions more difficult. In an effort to turn us from our purpose they tried in different ways to frighten the free world. Near Japan, Russian planes attacked an American plane. Near Formosa, Red China's artillery shelled a Nationalist island. In our own provinces, Communist agents started rumors designed to frighten our people and disrupt our daily lives. All of these incidents were part of a big pattern of Communist coercion.

However, not all who spread rumors are Communists. The Communist invents the falsehood. His agents plant it among the people, depending upon greed and ignorance to do the rest.

The greedy rumor-monger helps to spread lies because he wants to buy your property or possessions at sacrifice prices, or because he wants to raise the price of some necessities he has to sell. The ignorant rumor-monger wants to awe his neighbors with his importance. Both are as harmful to the community as the Communist who inspires them.

Remember these three sources next time someone whispers an alarming rumor in your ear. Ask yourself, Is he Communist, crook, or ignorant? Protect your self and neighbors by exposing him for what he is.

MANILA CONFERENCE OF 1954

LIST OF MEMBERS OF THE DELEGATIONS TO THE MANILA CONFERENCE OF 1954 AND THE AIDES OF THE CHIEF DELEGATES

AUSTRALIA

H. E. Rt. Hon. Richard G. Casey — Minister of External Affairs

Aide: Major Antonio M. Gonzales, FA, AFP

Sir Allan Watt	High Commissioner in Malaya
Rear Adm. G. D. Moore	Minister to the Philippines
Mr. A. D. McKnight	Assistant Secretary, Prime Minister's Department
Mr. S. Landau	Assistant Secretary, Defense Department
Mr. McNicol	Head Southeast Asia Section, Department of External Affairs
Brig. T. J. Daly	Director of Military Operations and Plans
Mr. L. E. Phillips	Second Secretary, Australian Legation in Manila
Mr. T. V. Holland	Third Secretary, Australian Legation in Manila
Mr. H. G. Marshall	Private Secretary to the Minister of External Affairs

FRANCE

Mr. Guy La Chambre — Minister of Associated States

(Aide: Maj. Renato de la Fuente, Inf. AFP)

H. E. Mr. Jean Chauvel	Ambassador of France
H. E. Mr. Jean Brionval	Minister of France
Col. Brohon	
Mr. Yves P. Benoist	First Secretary of Embassy
Mr. Jean Brethes	Secretary of Embassy
Mr. Michel de Ladoucette	Secretary of Embassy
Mr. Froment-Meurice	Secretary of Embassy
Mr. Bruno Radius	Secretary of Embassy
Mr. Peyric	Interpreter
Miss Emery	Secretary
Miss Rabut	Secretary
Miss Cuvillier	Secretary
Mrs. Boeau	Secretary
Mr. David W. McNico	Head, Southeast Asia Section, Department of External Affairs

NEW ZEALAND

H. E. T. Clifton Webb — Minister of External Affairs

Aide: Major Francisco E. Alcantara, Inf., AFP

Mr. Foss Shanahan	Deputy Secretary of External Affairs
Mr. G. R. Laking	Minister, New Zealand Embassy, Washington, D.C.

BRIG. C. E. WEIR	Quartermaster General
MR. C. CRAW	First Secretary, Department of External Affairs
MISS M. A. BARRACLOUGH	Private Secretary to the Minister

PAKISTAN

H. E. SIR MAHUMMAD ZAFRULLA KHAN	Minister for Foreign Affairs and Commonwealth Relations

Aide: Major Isabelo R. Castro, Inf., AFP

MR. A. HILALY	Acting Secretary, Ministry of Foreign Affairs
MAJOR GENERAL K. M. SHEIKH	Ministry of Defense
MR. A. RASHID IBRAHIM	Deputy Secretary, Ministry of Economic Affairs
MR. ABDUL HAFEEZ	Delegation Secretary
MR. FERHAT ALI	Private Secretary to the Foreign Minister

PHILIPPINES

HON. CARLOS P. GARCIA	Vice-President of the Philippines and concurrently Secretary of Foreign Affairs

Aide: Lt. Col. Jorge Delarmente, Inf., AFP

Plenipotentiary Representatives:

Senator Francisco A. Delgado, Chairman, Senate Committee on Foreign Relations
Senator Tomas L. Cabili
Senator Lorenzo M. Tañada
Congressman Miguel Cuenco, Chairman, House Committee on Foreign Affairs
Congressman Cornelio T. Villareal

Department advisers:

Undersecretary of Foreign Affairs Raul S. Manglapus
Minister Mauro Calingo
Minister Caesar Z. Lanuza
Counselor Jose Alejandrino
Counselor Victorio D. Carpio

Special Advisers:

Dr. Vicente Sinco
Lt. Gen. Jesus Vargas
Mr. Filemon Rodriguez
Prof. Gaudencio Garcia
Prof. Sotero Laurel
Prof. Enrique Fernando
Dean Conrado Benitez

Secretary:

Counselor Juan M. Arreglado

Consultant Body:

Senate:

Senator Manuel C. Briones
Senator Claro M. Recto
Senator Quintin Paredes
Senator Lorenzo M. Tañada
Senator Emmanuel Pelaez

House of Representatives:

Congressman Numeriano B. Babao
Congressman Lorenzo C. Teves
Congressman Erasmo R. Cruz
Congressman Jose M. Aldeguer
Congressman Diosdado Macapagal

Provincial Governors:

Governor Rafael Lazatin
Governor Alejo Santos
Governor Eliseo Quirino

THAILAND

H. R. H. PRINCE WAN WAITHAYAKON KROMMUN NARADHIP BONGSPRABANDH	Minister of Foreign Affairs

Aide: Major Celerino S. Tongson, Inf., AFP

NAI KHEMJATI PUNYARATABHAN	Deputy Minister of Foreign Affairs
NAI POTE SARASIN	Thai Ambassador to the United States of America
An Officer with the rank of General	
LUANG DITHAKAR BADKI	Director-General of Asia and Africa Department, Ministry of Foreign Affairs
NAI CHITTI SUCHARITAKUL....	Thai Minister to the Philippines
MOMCHAO PLERNG NOBADOL RABIBHATNA	Assistant Legal Adviser
An Officer with the Rank of Major	
NAI SAWATE KAMALABHUTI	Personal Secretary to the Minister of Foreign Affairs

UNITED KINGDOM

H.E. the RT. HON. ANTHONY EDEN, M.P.	Secretary of State for Foreign Affairs

Aide: Major Vicente R. Raval, Inf., AFP

SIR HAROLD CACCIA	Deputy Under-Secretary of State
MR. W. D. ALLEN	Assistant Under-Secretary of State
LT. GEN. SIR NEVIL BROWN-JOHN	Chief Staff Officer
SIR GERALD FITZMAURICE	Legal Adviser
MR. D. C. WATHERSON	Chief Secretary, Malaya
SIR ANTHONY RUMBOLD	Principal Private Secretary to H. E. the Rt. Hon. A. Eden
MR. C. D. W. O'NEILL	Counsellor (Press)
MR. J. G. TAHOURDIN	Counsellor
MR. A. H. M. HILLIS	Counsellor
MR. G. E. CROMBIE	Counsellor
COLONEL HARDIE	Deputy Director of Plans
COLONEL MANDER	Staff Officer
MR. A. A. STARK	Private Secretary to H. E. the Rt. Hon. A. Eden
MR. F. R. P. MCGINNIS	First Secretary
MR. J. H. BONHAM-CARTER	Conference Officer
MR. J. LAMB	First Secretary

WING-COMMANDER W. DISNEY	Staff Officer
MISS P. T. METCALFE	Conference Officer
MR. M. S. WEIR	Third Secretary Delegation Secretary

Supporting Staff

MISS D. GARTON	Personal Assistant to H.E. the Rt. Hon. A. Eden
MISS J. F. VEASEY	Personal Assistant to Sir H. Caocia
MISS P. E. BOND	Personal Assistant to Mr. W. D. Allen
MISS B. WHEATE	Personal Assistant to the Hon. C. D. W. O'Neill
MISS N. MCAUSLAN	Personal Assistant to Lt. Gen. Sir Nevil Brownjohn
MISS A. SYKES	Archivist
MISS D. GREY	Archivist
MR. A. ROUTLEDGE	Communications Officer
MR. A. BIGGAM	Communications Officer
MR. D. HAMILTON	Communications Officer
MR. R. M. CURRIE	Communications Officer
MR. R. R. WEEKES	Communications Officer
MR. E. WELLINGTON	Communications Officer
MR. C. A. J. SHEARS	Communications Officer
MR. J. BRICE	Communications Officer
MISS G. M. DU CROS	Conference Clerk
MISS E. M. HAYES	Typist
MISS J. MILLER	Typist
MISS K. ANDERSON	Typist
MISS J. E. BAKER	Typist
MISS A. WINDER	Typist
MISS B. SUMPTER	Typist
MISS J. SEMPLE	Typist
MR. F. RILEY	Security Guard
MR. G. BARRAS	Security Guard
MR. R. H. WEDGE	Security Guard
MR. D. JARVIS	Security Guard
MR. O. A. WILLIAMS	Security Guard
MR. D. W. STRUGNELL	Security Guard
MR. R. H. KEBBLE	Security Guard
MR. N. T. MURRAY	Security Guard
MR. P. OSBORNE	Security Guard
MR. L. E. PACKMAN	Security Guard
MR. E. BLAKEY	Security Guard
MR. J. BATEMAN	Security Guard
MR. B. BAULEY	Security Guard
MR. D. MCDOWELL	Security Guard
MR. D. MORGAN	Security Guard

UNITED STATES OF AMERICA

H. E. JOHN FOSTER DULLES ..... Secretary of State

Aide: Major Elias G. Lavadia, PAF, AFP

Plenipotentiary Representatives:

SENATOR H. ALEXANDER SMITH
SENATOR MICHAEL J. MANSFIELD

Delegation Coordinator:

MR. DOUGLAS MACARHUR II ..... Counselor, State Department, Head, Group of Experts

Special Advisers:

VICE ADMIRAL ARTHUR C. DAVIS	Deputy Assistant Secretary, International Security Affairs, Defense Department
MR. HERMAN PHLEGER	Legal Adviser, State Department
MR. CARL W. MCCARDLE	Assistant Secretary of State for Public Affairs
AMBASSADOR WILLIAM J. SEBALD	
AMBASSADOR RAYMOND A. SPRUANCE	

Press Officer:

MR. HENRY SUYDAM	Chief, News Division, State Department

Advisers:

State Department

MR. JAMES D. BELL	Officer-in-Charge, Philippine Affairs
MR. CHESTER L. COOPER	Office of Chinese Affairs
MR. JAMES E. CROSS	Bureau of Far Eastern Affairs
MR. WILLIAM J. GALLOWAY	Office Counselor
MR. OUTERBRIDGE HORSEY	Officer-in-Charge, Commonwealth Affairs
MR. CHARLES C. STELLE	Policy Planning Staff
MR. RANDOLPH A. KIDDER	

Defense Department

LT. COL. JOHN E. DWAN	
MR. CHARLES A. SULLIVAN	Chief, American Far East Division, Foreign Military Affairs

U. S. Embassy

MR. WILLIAM S. B. LACY	Counselor

Deputy Coordinator

MR. WALTER N. TRULOCK	Executive Secretariat, State Department

Reports Officer

MR. EUGENE V. MCAULIFFE	Executive Secretariat, State Department

Administrative Officer

MR. BRUCE GRAINGER	Division of International Conferences, State Department

Special Assistant to Secretary Dulles

Mr. Roderic L. O'Connor

Working Group

MR. WILLIAM D. WRIGHT	Administrative Officer, U.S. Embassy in Manila
MR. FRANK MADDEN	Security Officer
MR. JOHN W. FORD	Security Officer
MISS MILDRED ASBOJORNSON	
MISS ALOHA BAGULEY	
MISS PHYLLIS D. BERNAU	
MISS DOROTHY COFFIN	

MISS MARGARET COVEY
MISS E. JANE FOSTER
MR. LAURENCE E. GRUZA
MISS SHIRLEY ANN HEALD
MISS MARY IDA HOLLIS
MR. STANLEY E. HOLDEN
MISS ELINOR VAN INGEN
MR. KENNETH W. KNAUF
MISS PAULINE J. LAW
MISS ELLA L. LEE
MR. KEITH O. LYNCH
MR. JOHN P. MULLIGAN
MR. N. PAUL NEILSON
MISS EDITH G. THOMAS
MISS G. W. TOULME
MISS FRANCIS VALEO

LIST OF THE MEMBERS OF THE SECRETARIAT TO THE MANILA CONFERENCE OF 1954

DIRECTORY OF THE SECRETARIAT

Secretary-General:

Honorable Raul S. Manglapus
Undersecretary of Foreign Affairs

Assistants to the Secretary-General:

1. Minister Mauro Calingo
   Counselor on Administration and Controls
   Department of Foreign Affairs
2. Mr. Jose Alejandrino
   Counselor on Political and Cultural Affairs
   Department of Foreign Affairs
3. Mr. Caesar Z. Lanuza
   Counselor on Economic Affairs
   Department of Foreign Affairs
4. Mr. Victorio D. Carpio
   Counselor on Legal Affairs
   Department of Foreign Affairs
5. Mr. Alberto L. Katigbak
   Chief, Division of Intelligence
   Department of Foreign Affairs
6. Mr. Jose S. Estrada
   Chief of Protocol
   Department of Foreign Affairs

Information and Publicity Officer:

Hon. Jose V. Cruz
Press Secretary
Office of the President of the Philippines

Administrative Officers:

Mr. Juan C. Dionisio, Chief, Division of Foreign Service Administration, Department of Foreign Affairs

OFFICE OF THE SECRETARY GENERAL

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DECISIONS OF THE SUPREME COURT

[No. L-6312. September 9, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* W. D. CHAPMAN, defendant and appellant

CRIMINAL LAW; LIBEL; VENUE OF CRIME.—A resolution, allegedly libelous, was adopted by a Philippine nonstock corporation domiciled in Tacloban, Leyte. Copies thereof were mimeographed and distributed among the members residing in Leyte. One copy was sent to a member who was residing in the Province of Samar. The accused, officers and directors of the corporation, were prosecuted and convicted of libel by the Court of First Instance of Samar, although it found that the only copy sent to the Samar member was a privileged communication. *Held:* The resolution was neither published nor circulated in the Province of Samar and the Court of First Instance therein had no jurisdiction to take cognizance of a crime of libel committed in other jurisdiction.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, *J.*

The facts are stated in the opinion of the court.

Lino L. Añover for defendant and appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jesus A. Avanceña* for plaintiff and appellee.

REYES, J. B. L., *J.:*

Francisco Deriada, Antonio Giron, José Parreño and William Chapman were convicted by the Court of First Instance of Samar of the crime of libel. Deriada was sentenced to pay a fine of ₱500; and his co-accused, including appellant Chapman, were fined ₱200 each. All four were ordered to suffer subsidiary imprisonment in case of insolvency and to pay the costs proportionately.

The appeal of Chapman was originally docketed in the Court of Appeals; but as the only error assigned was the trial Court's refusal to dismiss the case for lack of jurisdiction, the Court of Appeals certified the case to this court.

The facts are as follows: The four accused were officers and directors of the Leyte Rifle and Pistol Association Inc., a Philippine nonstock corporation domiciled in Tacloban, Leyte. Deriada was the president; Parreño being the Secretary, Giron the Acting Treasurer and Chapman the Range Officer. The offended party, Gregorio A. Conde, was the vice president; and he and Deriada had been formerly associated in the business of selling firearms. On October 21, 1948, Conde separated from Deriada in order to serve as branch manager of the Philippine Trading Co., a competing firm, and relations between the two

gradually became strained. On November 20, 1948, a special meeting of the Board of Directors of the Leyte Rifle & Pistol Association Inc., was held, attended by the four accused, and the following resolution was passed:

"On motion presented by Director W. D. Chapman and seconded by Director-Treasurer Antonio Giron, the following resolution was unanimcusly approved:

RESOLUTION

'Whereas, this governing body of the LEYTE RIFLE & PISTOL ASSOCIATION, INC., now assemble found sufficient documentary proofs against Mr. Gregorio A. Conde for having used the name of the association without proper authority to collect monies from the members which up to the moment of this assembly said Mr. Gregorio A. Conde intentionally fail to account for the collections as claimed by members in writing;

'Whereas, the good name and integrity of the LEYTE RIFLE & PISTOL ASSOCIATION, INC., is at stake and will be ruined and exposed to mockery and contempt by all members and the public;

'Be It Resolved, therefore, as we hereby resolve that the President of the Association be given our sanction to take up the matter with the Provincial Fiscal for proper action, and that said Mr. Gregorio A. Conde be temporarily suspended as Vice-President and Manager pending the result of any action taken by the Provincial Fiscal; Be It Resolved Further that copies of this resolution be sent to the Chief, Philippine Constabulary, Camp Crame, Quezon City, to the Provincial Commander, PC, at Tacloban, Leyte and to the press for circulation.

'Unanimously approve'.

I hereby certify that the foregoing is true and correct, and the above quoted resolution has been duly acted upon and approved unanimously by the members of the Board of Directors, who were present.

'(Sgd.) JOSE P. PARREÑO
Acting Secretary

Attested By:

(Sgd.) FRANCISCO B. DERIADA
President

Concurrently confirmed by:

(Sgd.) ANTONIO G. GIRON
Acting Treasurer

(Sgd.) W. D. CHAPMAN
Range Officer

(Pages 4–5, Annex "A", Appellants' brief)

Mimeographed copies of the resolution were sent to all the members of the Association residing in Leyte; to one Pedro Mancebo, residing in Catbalogan, Samar, also a member; to the Philippine Constabulary authorities in Tacloban and Quezon City; and to the Philippine Trading Co., (the principal of complainant Gregorio A. Conde) in Manila. No copies were released to the press.

Based on the foregoing events, this case for libel was filed and prosecuted in the Court of First Instance of Catbalogan, Samar, with appellant Chapman being accorded

trial separately from his co-accused. In its decision, the trial court stated:

* * * * * * *

But can the publication made of Exhibit 'A' be considered 'a private communication made by any person to another in the performance of any legal, moral or social duty'? The publication of Exhibit 'A' by furnishing the members with the mimeograph copies thereof falls under this exemption of the law as it should be considered done in the performance of a legal duty. 'A communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privilege if made to a person having a corresponding interest or duty, although it contains incriminatory or derogatory matter which without the privilege would be libelous and actionable' (U. S. *vs.* Cañete, 38 Phil., 253). The communication to Pedro Mancebo of Catbalogan, Samar should fall under the same qualified privilege, inasmuch as Mancebo is a member of the Leyte Rifle and Pistol Association, Inc.

Was the publication by sending copies of Exhibit 'A' to the Headquarters of the Philippine Constabulary at Manila, the Provincial Commander of the Constabulary at Tacloban, and the Manager of the Philippine Trading Co., at Manila in performance of legal, moral or social duty that it may be considered a qualified privilege? Our answer is in the negative. The defense did not prove that it was any legal, moral or social duty on the part of the accused."

Consequently, the Court convicted the accused as aforesaid, declaring the resolution to be libelous and without justifiable motives; wherefore the accused Chapman interposed the present appeal.

The issue now before us is whether the Court of First Instance of Samar had jurisdiction to convict appellant Chapman of the crime of libel, considering the facts shown in evidence and appearing in the decision appealed from. The question must be answered in the negative.

In People *vs.* Borja, 43 Phil., 618, this Court ruled that a criminal prosecution for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed. Since there is no question that the libelous resolution was adopted and copies thereof mimeographed in Leyte, and not in Samar; and since the only copy sent to Pedro Mancebo in Samar was expressly found and declared by the appealed decision to be privileged, because Mancebo was a member of the Rifle and Pistol Association, Inc. and was interested in its affairs; and there being no finding of any other publication in the Province of Samar, the resolution, allegedly libelous, was neither published nor circulated in said province and the Court of First Instance therein had no jurisdiction to take cognizance of the crime alleged in the information. In effect, as pointed out by the appellant and concurred in by the Solicitor General, the decision appealed from has convicted the appellant for a crime of libel committed either in

the City of Manila or in the municipality of Tacloban, Leyte. That the Court of Samar had no jurisdiction to take cognizance of a crime committed in other jurisdictions, but not in its own, needs no stressing.

The decision appealed from is reversed and the case ordered dismissed, because of the lack of jurisdiction. Costs *de oficio*.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and *Concepcion, JJ.*, concur.

Judgment reversed.

[No. L-6851. September 16, 1954]

FEDERICO MAGALLANES, ET AL., petitioners, *vs.* HONORABLE COURT OF APPEALS, ET AL., respondents

1. PATERNITY AND FILIATION; SUCCESSION; NATURAL CHILDREN NOT LEGALLY ACKNOWLEDGED NOT ENTITLED TO INHERIT.—Natural children not legally acknowledged are not entitled to inherit under article 840 of the old Civil Code.
2. ID.; ID.; ID.; ACTION FOR COMPULSORY RECOGNITION MUST BE BROUGTH WITHIN FOUR YEARS AFTER DEATH OF NATURAL FATHER.—The action for compulsory recognition must be instituted within four years after the death of the natural father.

PETITION FOR REVIEW of the decision of the Court of Appeals dated April 22, 1953.

The facts are stated in the opinion of the court.

Vicente Castronuevo, Jr. for petitioner.
Diosdado Caringalao for respondents.

PARAS, *C. J.:*

In Civil Case No. 1264 of the Court of First Instance of Iloilo, Maximo Magallanes, et al., plaintiffs *vs.* Federico Magallanes, et al., defendants, a decision was rendered on May 28, 1951, with the following dispositive part:

"In view of the foregoing considerations, the Court finds that the preponderance of evidence is that the above properties are of Justo Magallanes and that both plaintiffs and defendants are the legal heirs of Justo Magallanes and, therefore, they should share proportionately in the properties in question. Each child of Justo Magallanes from both wives is entitled to one-seventh of the undivided share of the land in question. Inasmuch as the plaintiffs paid ₱220 for the mortgages as shown in Exhibits D and G, the other heirs are obliged to reimburse proportionately the said amount of ₱220 to the plaintiffs."

Upon appeal by the defendants to the Court of Appeals, the latter court rendered on April 22, 1953, a decision the dispositive part of which reads as follows:

"Wherefore, the decision appealed from is hereby modified in the sense that each of the plaintiffs shall participate in the proportion subject of litigation in the proportion of one-half of the share that corresponds to each of the defendants. The latter are

further sentenced to pay jointly and severally to plaintiffs said sum of ₱220 that they spent for the redemption of the parcels of land under Tax Declarations Nos. 21719 (Exhibit D) and 2153 (Exhibit G). In the meantime this is not done, the properties mentioned in Exhibits D and G will answer for the payment of this sentence. Without pronouncements as to costs."

Not satisfied with the decision of the Court of Appeals, the defendants have filed the present petition for its review on certiorari.

The findings of fact of the Court of Appeals upon which its decision rests, quoted verbatim, are as follows:

"(*a*) That the properties under litigation were not of Damiana Tupia but of her husband, the late Justo Magallanes;

"(*b*) That plaintiffs Maximo, Gaspar, Baltazar and Bienvenido, surnamed Magallanes, had redeemed from their vendees *a retro* Filomeno Gallo and Soledad Canto (Exhibit D) and Jose Capanang (Exhibit G) the parcels of land under Tax 21719 and 2153 mentioned in said exhibits and paid for such redemptions the sums of ₱100 and ₱120, respectively;

"(*c*) That Enrica Tagaduar, alleged mother of the plaintiffs, did not marry Justo Magallanes in the year 1918 after the death of his first wife Damiana Tupia occurred in 1915. We arrived at this conclusion not only because Justo's sister Aleja Magallanes positively declared 'that until the death of my brother (Justo) he was never married again,' but also because Justo Magallanes himself declared in various documents that he executed in his lifetime and up to 1936, that he was a widower (Exhibit B, C and I), and although it is true that in 1939 his civil status appearing on Exhibit F is that of 'married' (without stating to whom he was married then), it does not follow, even if the statement of such status was not due to a clerical error, that he was precisely married to Enrica Tagaduar who did not pretend that she married him between 1936 and 1938, but in 1918. Plaintiffs-appellees state that according to our jurisprudence:

> 'A man or woman who are living in marital relations, under the same roof, are *presumed* to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence. (U. S. *vs.* Uri et al., 34 Phil., 653; U. S. *vs.* Villafuerte, 4 Phil., 559).

but this doctrine only establishes a presumption that in the case at bar was rebutted by the testimony of Aleja Magallanes and by documents executed by Justo Magallanes himself. In this case it is not a matter of imagining what might have happened to the plaintiffs, as the trial court does without adequate support in the record. Furthermore, and even considering that the plaintiffs are the natural children of Justo Magallanes and that sometime between 1936 and 1939 Justo Magallanes married Enrica Tagaduar, such marriage could not have the effect of automatically legitimizing the children born prior to the marriage, because our Civil Code provides:

> 'Art. 121. Children shall be considered as legitimized by a subsequent marriage *only* when they have been acknowledged by the parents before or after the celebration thereof.'

and the record fails to adequately show that such acknowledgment ever took place.

"(d) That the plaintiffs are the natural children of the late Justo Magallanes by Enrica Tagaduar. The defendants do not

deny their status as such and it can be inferred from the records that they enjoyed such status during the lifetime of their deceased father."

Petitioners' main contention is that the Court of Appeals erred in holding that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes, as mere natural children of the deceased Justo Magallanes, without having been legally acknowledged, are entitled to inherit under article 840 of the old Civil Code, which reads as follows:

"When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of legitimate children who have not received any betterment, provided that it may be included within the freely disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.

"The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation."

Petitioners' contention is tenable. We are bound by the finding of the Court of Appeals in its decision that said respondents are the natural children of Justo Magallanes, that the petitioners do not deny their status as such, and that it can be inferred from the records that they enjoyed such status during the lifetime of their deceased father. Nonetheless, we are also bound by its finding that the record fails to adequately show that said respondents were ever acknowledged as such natural children. Under article 840 of the old Civil Code, above quoted, the natural children entitled to inherit are those legally acknowledged. In the case of Briz vs. Briz, 43 Phil. 763, the followig pronouncement was made: "* * * the actual attainment of the status of a legally recognized natural child is a condition precedent to the realization of any rights which may pertain to such child in the character of heir. In the case before us, assuming that the plaintiff has been in the uninterrupted possession of the status of natural child, she is undoubtedly entitled to enforce legal recognition; but this does not in itself make her a legally recognized natural child." It being a fact, conclusive in this instance, that there was no requisite acknowledgment, the respondents' right to inherit cannot be sustained.

The respondents cannot demand that this suit be considered a complex action for compulsory recognition and partition, under the authority of Briz vs. Briz, *supra*, and Lopez *vs.* Lopez, 68 Phil., 227, for the reason that the action was not instituted within the four years following the death of the alleged natural father (Art. 137, old Civil Code; Art. 285, New Civil Code). According to the decision of the Court of Appeals, the father, Justo

Magallanes, died in 1943, and the present action was instituted seven years later in 1950.

Wherefore, the decision of the Court of Appeals is hereby modified by eliminating therefrom the ruling that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes are entitled to inherit from the deceased Justo Magallanes in the proportion of one-half of the share that corresponds to each of the petitioners Federico, Fermin and Angel Magallanes. So ordered without costs.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion, and *J.B.L. Reyes, JJ.*, concur.

Judgment modified.

[No. L-6902 September 16, 1954]

URBANO CASILLAN, petitioner and appellee, *vs.* FRANCISCA E. VDA. DE ESPARTERO, ET AL., oppositors and appellants

LAND REGISTRATION; JURISDICTION OF LAND REGISTRATION COURT TO ORDER RECONVEYANCE OF PROPERTY ERRONEOUSLY REGISTERED IN ANOTHER'S NAME; REMEDY OF LANDOWNER.—The Court of First Instance, in the exercise of its jurisdiction as a land registration court, has no authority to order a reconveyance of a property erroneously registered in another's name. The remedy of the landowner in such a case should the time allowed for the reopening of the decree have already expired—is to bring an ordinary action in the ordinary courts of justice for reconveyance, or for damages if the property has passed into the hands of an innocent purchaser for value.

APPEAL from an order of the Court of First Instance of Cagayan. Ladaw, *J.*

The facts are stated in the opinion of the court.

Manuel G. Alvarado for the oppositors and appellants.
Manuel G. Manzano for petitioner and appellee.

REYES, A., *J.:*

On December 19, 1950, Urbano Casillan filed a verified petition in the Court of First Instance of Cagayan in Cadastral Case No. 26, Record No. 2, G. L. R. O. No. 1390, alleging that he was the owner of lot No. 1380, filed a claim therefor in said case and paid all cadastral costs, but that by mistake title was issued to Victorino Espartero, who never possessed or laid claim to the said lot. Petitioner, therefore, prayed that "in the interest of equity and under section 112 of Act 496," the court order the heirs of Victorino Espartero—the latter having already died—to reconvey the lot to the petitioner, or merely order the correction of the certificate of title by substituting his name for that of Victorino Espartero as registered owner.

Opposing the petition, the heirs of Victorino Espartero filed a motion to dismiss on the ground, among others, that section 112 of Act 496 did not authorize the reconveyance or substitution sought by petitioner; but the court declared the section applicable. And having found, after hearing, that the lot belonged to petitioner and that title thereto was issued in the name of Victorino Espartero as a consequence of a clerical error in the preparation of the decree of registration, the court ordered the reconveyance prayed for. From this order, oppositors have appealed to this court and one of the questions raised is that section 112 of Act 496 did not authorize the lower court to order such reconveyance.

Stated another way, appellants' position is that the Court of First Instance, in the exercise of its jurisdiction as a land registration court, had no authority to order a reconveyance in the present case. The appeal thus raises a question of jurisdiction.

In view of our decision in the case of Director of Lands *vs.* Register of Deeds et al., 49 Off. Gaz., No. 3, p. 935, appellants' contention must be upheld. In that case, the court of land registration had confirmed title in the Government of the Philippine Islands to a parcel of land situated in Malabon, Rizal, but the corresponding decree and certificate of title were issued, not in the name of the Philippine Government, but in that of the municipality of Malabon. Years after, the Director of Lands filed in the original land registration case a petition for an order to have the error corrected and the certificate of title put in the name of the Republic of the Philippines. Acting on the petition, the Court of First Instance of Rizal issued the order prayed for on the authority of section 112 of the Land Registration Act. But upon appeal to this Court, the order was reversed, this Court holding that the lower court, as a land court, had no jurisdiction to issue such order. as the section cited did not apply to the case. Elaborating on the scope of said section, this Court said:

"Roughly, section 112, on which the Director of Lands relies and the order is planted, authorizes, in our opinion, only alterations which do not impair rights recorded in the decree, or alterations which, if they do prejudice such rights, are consented to by all the parties concerned, or alterations to correct obvious mistakes. By the very fact of its indefeasibility, the Court of Land Registration after one year loses its competence to revoke or modify in a substantial manner a decree against the objection of any of the parties adversely affected. Section 112 itself gives notice that it 'shall not be construed to give the court authority to open the original decree of registration,' and section 38, which sanctions the opening of a decree within one year from the date of its entry, for fraud, provides that after that period 'every decree or certificate of title issued in accordance with this section shall be incontrovertible.'

"Under the guise of correcting clerical errors, the procedure here followed and the appealed order were virtual revision and nullification of generation-old decree and certificate of title. Such procedure and such order strike at the very foundation of the Torrens System of land recording laid and consecrated by the emphatic provisions of sections 38 and 112 of the Land Registration Act, *supra*. In consonance with the universally-recognized principles which underlie Act No. 496, the court may not, even if it is convinced that a clerical mistake was made, recall a certificate of title after the lapse of nearly 30 years from the date of its issuance, against the vigorous objection of its holder. As was said in a similar but much weaker case than this (Government *vs.* Judge, etc., 57 Phil., 500): 'To hold that the substitution of the name of a person, by subsequent decree, for the name of another person to whom a certificate of title was issued (five years before) in pursuance of a decree, effects only a correction of a clerical error and that the court had jurisdiction to do it, requires a greater stretch of the imagination than is permissible in a court of justice.' (Syllabus.) It should be noticed that in that case, as in this case, the later decree 'was based on the hypothesis that the decree of May 14, 1925, contained a clerical error and that the court had jurisdiction to correct such error in the manner aforesaid.'

"The sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree, as was done in the instant case but, respectively the decree as incontrovertible and no longer open to review, but to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages."

In line with the ruling laid down in the case cited, the order herein appealed from must be, as it is hereby, revoked, without prejudice to the filing of an ordinary action in the ordinary courts of justice for reconveyance, or for damages if the property has passed into the hands of an innocent purchaser for value. Without costs.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.*, concur.

Order revoked.

[No. L-7188. August 9, 1954]

In re: Will and Testament of the deceased REVEREND SANCHO ABADIA. SEVERINA A. VDA. DE ENRIQUEZ, ET AL., petitioners and appellees, *vs.* MIGUEL ABADIA, ET AL., oppositors and appellants.

1. WILLS; PROBATE OF WILL; VALIDITY OF WILL AS TO FORM DEPENDS UPON LAW IN FORCE AT TIME OF EXECUTION; TITLE OF LEGATEES AND DEVISEES UNDER WILL VESTS FROM TIME OF EXECUTION.—The validity of a will as to form is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but at the time the instrument was executed. One reason in support of the rule is that although the will operates upon and after the death of the testator, the wishes of the testator about the disposition

of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality, the legacy or bequest then becomes a completed act.

2. ID.; EXECUTION OF WILLS; LAW SUBSEQUENTLY PASSED, ADDING NEW REQUIREMENTS AS TO EXECUTION OF WILLS; FAILURE TO OBSERVE FORMAL REQUIREMENTS AT TIME OF EXECUTION INVALIDATES WILLS; HEIRS INHERIT BY INTESTATE SUCCESSION; LEGISLATURE CAN NOT VALIDATE VOID WILLS.—From the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the Constitution against a subsequent change in the statute adding new legal requirements of execution of wills, which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the Legislature can not validate void wills (57 Am. Jur., Wills, Sec. 231, pp. 192–193).

APPEAL from an order of the Court of First Instance of Cebu. Piccio, *J.*

The facts are stated in the opinion of the court.

Manuel A. Zosa, Luis B. Ladonga, Mariano A. Zosa and *B. G. Advincula* for oppositors and appellants.

C. de la Victoria for petitioners and appellees.

MONTEMAYOR, *J.:*

On September 6, 1923, Father SANCHO ABADIA, parish priest of Talisay, Cebu, executed a document purporting to be his Last Will and Testament now marked Exhibit "A". Resident of the City of Cebu, he died on January 14, 1943, in the municipality of Aloguinsan, Cebu, where he was an evacue. He left properties estimated at ₱8,000 in value. On October 2, 1946, one Andres Enriquez, one of the legatees in Exhibit "A", filed a petition for its probate in the Court of First Instance of Cebu. Some cousins and nephews who would inherit the estate of the deceased if he left no will, filed opposition.

During the hearing one of the attesting witnesses, the other two being dead, testified without contradiction that in his presence and in the presence of his two co-witnesses, Father Sancho wrote out in longhand Exhibit "A" in Spanish which the testator spoke and understood; that he (testator) signed on the left hand margin of the front page of each of the three folios or sheets of which the document is composed, and numbered the same with Arabic numerals, and finally signed his name at the end of his writing at the last page, all this, in the presence of the three

attesting witnesses after telling that it was his last will and that the said three witnesses signed their names on the last page after the attestation clause in his presence and in the presence of each other. The oppositors did not submit any evidence.

The learned trial court found and declared Exhibit "A" to be a holographic will; that it was in the handwriting of the testator and that although at the time it was executed and at the time of the testator's death, holographic wills were not permitted by law still, because at the time of the hearing and when the case was to be decided the new Civil Code was already in force, which Code permitted the execution of holographic wills, under a liberal view, and to carry out the intention of the testator which according to the trial court is the controlling factor and may override any defect in form, said trial court by order dated January 24, 1952, admitted to probate Exhibit "A", as the Last Will and Testament of Father Sancho Abadia. The oppositors are appealing from that decision; and because only questions of law are involved in the appeal, the case was certified to us by the Court of Appeals.

The new Civil Code (Republic Act No. 386) under article 810 thereof provides that a person may execute a holographic will which must be entirely written, dated and signed by the testator himself and need not be witnessed. It is a fact, however, that at the time that Exhibit "A" was executed in 1923 and at the time that Father Abadia died in 1943, holographic wills were not permitted, and the law at the time imposed certain requirements for the execution of wills, such as numbering correlatively each page (not folio or sheet) in letters and signing on the left hand margin by the testator and by the three attesting witnesses, requirements which were not complied with in Exhibit "A" because the back pages of the first two folios of the will were not signed by any one, not even by the testator and were not numbered, and as to the three front pages, they were signed only by the testator.

Interpreting and applying this requirement this Court in the case of In re Estate of Saguinsin, 41 Phil., 875, 879, referring to the failure of the testator and his witnesses to sign on the left hand margin of every page, said:

> "* * *. This defect is radical and totally vitiates the testament. It is not enough that the signatures guaranteeing authenticity should appear upon two folios or leaves; three pages having been written on, the authenticity of all three of them should be guaranteed by the signature of the alleged testatrix and her witnesses."

And in the case of Aspe *vs.* Prieto, 46 Phil., 700, referring to the same requirement, this court declared:

"From an examination of the document in question, it appears that the left margins of the six pages of the document are signed only by Ventura Prieto. The noncompliance with section 2 of Act No. 2645 by the attesting witnesses who omitted to sign with the testator at the left margin of each of the five pages of the document alleged to be the will of Ventura Prieto, is a fatal defect that constitutes an obstacle to its probate."

What is the law to apply to the probate of Exhibit "A"? May we apply the provisions of the new Civil Code which now allows holographic wills, like Exhibit "A" which provisions were invoked by the appellee-petitioner and applied by the lower court? But article 795 of this same new Civil Code expressly provides: "The validity of a will as to its form depends upon the observance of the law in force at the time it is made." The above provision is but an expression or statement of the weight of authority to the effect that the validity of a will is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but at the time the instrument was executed. One reason in support of the rule is that although the will operates upon and after the death of the testator, the wishes of the testator about the disposition of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality, the legacy or bequest then becomes a completed act. This ruling has been laid down by this court in the case of In re Will of Riosa, 39 Phil., 23. It is a wholesome doctrine and should be followed.

Of course, there is the view that the intention of the testator should be the ruling and controlling factor and that all adequate remedies and interpretations should be resorted to in order to carry out said intention, and that when statutes passed after the execution of the will and after the death of the testator lessen the formalities required by law for the execution of wills, said subsequent statutes should be applied so as to validate wills defectively executed according to the law in force at the time of execution. However, we should not forget that from the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the constitution against a subsequent change in the statute adding new legal requirements of execution of wills which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should

be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the Legislature can not validate void wills (57 Am. Jur., Wills, Sec. 231, pp. 192–193).

In view of the foregoing, the order appealed from is reversed, and Exhibit "A" is denied probate. With costs.

Parás, C. J., Pablo, Bengzon, Padilla, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Order reversed.

[No. L–5513. August 18, 1954]

DOMINGO DEL ROSARIO, plaintiff and appellee, *vs.* GONZALO P. NAVA, defendant-petitioner and appellant, ALTO SURETY & INSURANCE CO., INC., surety-respondent and appellee.

1. EXECUTION OF JUDGMENT; DAMAGES ON ACCOUNT OF WRONGFUL ATTACHMENT; CLAIM FOR DAMAGES ON PLAINTIFF'S BOND; SINGLE JUDGMENT AGAINST PRINCIPAL AND SURETIES.—Section 20 of Rule 59 plainly calls for only one judgment for damages against the attaching party and his sureties; which is explained by the fact that the attachment bond is a solidary obligation. Since a judicial bondsman has no right to demand the exhaustion of the property of the principal debtor (as expressly provided by article 2084 of the new Civil Code, and article 1856 of the old one), there is no justification for the entering of separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce the award of damages against whomsoever he considers in a better situation to pay it.
2. ID.; ID.; ID.; ID.; APPLICATION AGAINST SURETIES MUST BE MADE BEFORE JUDGMENT AGAINST PRINCIPAL BECOMES FINAL AND EXECUTORY.—While the prevailing party may apply for an award of damages against the surety even after an award has been already obtained against the principal (Visayan Surety and Insurance Corp. *vs.* Pascual, L–2981, March 23, 1950), still the application and notice against the surety must be made before the judgment against the principal becomes final and executory, so that all awards for damages may be included in the final judgment.
3. ID.; ID.; PURPOSE OF REQUIREMENTS OF SECTION 20, RULE 59.—The requirements of section 20 of Rule 59 appear designed to avoid a multiplicity of suits. To enable the defendant to secure a hearing and judgment against the sureties in the attachment bond, even after the judgment for damages against the principal has become final, would result in as great a multiplicity of actions as would flow from enabling him to sue the principal and the sureties in separate proceedings.

APPEAL from an order of the Court of First Instance of Manila. Pecson, J.

The facts are stated in the opinion of the court.

Relova & Melo for plaintiff and appellee.

Guido Advincula and *Potenciano Villegas, Jr.* for defendant Gonzalo P. Nava.

Raul A. Aristorenas for the Alto Surety & Insurance Co., Inc.

REYES, J. B. L., *J.:*

Appeal from an order of the Court of First Instance of Manila in its Civil Case No. 4949, refusing to entertain appellant's application to require the Alto Surety and Insurance Co., Inc. to show cause why execution should not issue against its attachment bond filed in said case.

The facts are undisputed. Domingo del Rosario had instituted an ejectment suit against Gonzalo P. Nava in the Municipal Court of Manila, Civil Case No. 4467, and on January 30, 1948, he secured a writ of attachment upon due application and the filing of an attachment bond for ₱5,000, with the Alto Surety and Insurance Co., Inc. as surety. Attachment was levied and after the case was tried, the Municipal Court rendered judgment against the defendant Nava. The latter appealed to the Court of First Instance of Manila, where the case was docketed with number 4949. In the Court of First Instance, Nava filed a new answer with a counterclaim, alleging that the writ of attachment was obtained maliciously, wrongfully, and without sufficient cause, and that its levy had caused him damages amounting to ₱5,000. No notice of this counterclaim was served upon the surety of the attachment bond, Alto Surety and Insurance Co., Inc.

By decision of July 21, 1950, the Court of First Instance found that the attachment was improperly obtained, and awarded ₱5,000 damages and costs to the defendant Nava. The judgment having become final, a writ of execution was issued, but it had to be returned unsatisfied on January 19, 1951, because no leviable property of the plaintiff Del Rosario could be found. On November 7, 1951, Nava filed, through counsel, a motion in Court setting forth the facts and praying that the Alto Surety and Insurance Co., Inc. be required to show cause why it should not respond for the damages adjudged in favor of the defendant and against the plaintiff. The surety company filed a written opposition on the ground that the application was filed out of time, it being claimed that under section 20, Rule 59 of the Rules of Court, the application and notice to the surety should be made before trial, or at the latest, before entry of the final judgment. After written reply and rejoinder, the Court of First Instance, on December 10, 1951, issued

the assailed order, rejecting Gonzalo P. Nava's motion to require the Alto Surety and Insurance Co., Inc. to show cause, because it was filed out of time. Nava then appealed to this court.

The issue before us is whether a notice to the sureties made after the award of damages against the principal in the attachment bond has become final, can be considered timely in view of section 20, Rule 59, providing as follows:

"SEC. 20. *Claim for damages on plaintiff's bond on account of illegal attachment.*—If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court."

Appellant invokes and relies upon the decisions of this court in Visayan Surety and Insurance Corp. *vs.* Pascual, G. R. No. L–2981, promulgated on March 23, 1950, and in Liberty Construction Supply Company *vs.* Pecson, et al., G. R. No. L–3694, promulgated on March 23, 1951. In the first case cited, this court ruled as follows:

"(1) That damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety;

(2) That if the surety is given much due notice, he is bound by the judgment that may be entered against the principal, and writ of execution may issue against said surety to enforce the obligation of the bond; and

(3) That if, as in this case, no notice is given to the surety of the application for damages, the judgment that may be entered against the principal cannot be executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. In such case, upon application of the prevailing party, the court must order the surety to show cause why the bond should not respond for the judgment for damages. If the surety should contest the prevailing party, the court must set the application and answer for hearing. The hearing will be summary and will be limited to such new defense, not previously set up by the principal, as the surety may allege and offer to prove. The oral proof of damages already adduced by the claimant may be reproduced without the necessity of an opportunity to cross-examine the witness or witnesses if it so desires.

To avoid the necessity of such additional proceedings, lawyers and litigants are admonished to give due notice to the surety of

their claim for damages on the bond at the time such claim is presented."

And in Liberty Construction & Supply Co. *vs.* Pecson, G. R. No. L–3694, May 23, 1951, this court held:

"The petitioner, in support of his contention that the judgment for damages in favor of the petitioner against the plaintiff in the civil case binds the respondent Alto Surety and Insurance Co., Inc., although the latter was not notified or included as defendant in the petitioner's counterclaim for damages against the said plaintiff, quotes the decision of this court in the case of Florentino *vs.* Domadag, 45 Off. Gaz., (11) 4937, promulgated on May 14, 1948. But the ruling in said case was abandoned in a later case entitled Visayan Surety and Insurance Corp. *vs.* Pascual et al, G. R. No. L–2981, promulgated on March 23, 1950, in which this court held that 'damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety' and 'that if the surety is given such due notice, he is bound by the judgment that may be entered against principal, and writ of execution may issue against said surety to enforce the obligation of the bond,' and that if no notice is given the surety the judgment cannot be executed against him without giving him an opportunity to present such defense as he may have which the principal could not previously set up."

It will be seen that the rulings above quoted are silent on the question now before us, that is to say, the time within which the application and notice to the surety should be filed in those cases where a judgment for damages has already been rendered against the plaintiff as principal of the attachment bond. Upon mature consideration, we have reached the conclusion that under the terms of section 20, of Rule 59, the application for damages and the notice to the sureties should be filed in the trial court by the party damnified by the wrongful or improper attachment either "before the trial" or at the latest, "before entry of the final judgment", which means not later than the date when the judgment becomes final and executory (section 2, Rule 35). Only in this way could the award against the sureties be included in the final judgment" as required by the first part of section 20 of Rule 59. The rule plainly calls for only one judgment for damages against the attaching party and his sureties; which is explained by the fact that the attachment bond is a solidary obligation. Since a judicial bondsman has no right to demand the exhaustion of the property of the principal debtor (as expressly provided by article 2084 of the new Civil Code, and article 1856 of the old one), there is no justification for the entering of separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce

the award of damages against whomsoever he considers in a better situation to pay it.

It should be observed that the requirements of section 20 of Rule 59 appear designed to avoid a multiplicity of suits. But to enable the defendant to secure a hearing and judgment against the sureties in the attachment bond, even after the judgment for damages against the principal has become final, would result in as great a multiplicity of actions as would flow from enabling him to sue the principal and the sureties in separate proceedings.

In view of the foregoing, we hold that while the prevailing party may apply for an award of damages against the surety even after an award has been already obtained against the principal, as ruled in Visayan Surety and Insurance Corp. *vs.* Pascual, G. R. No. L–3694, still the application and notice against the surety must be made before the judgment against the principal becomes final and executory, so that all awards for damages may be included in the final judgment. Wherefore, the court below committed no error in refusing to entertain the appellant Nava's application for an award of damages against the appellee surety Company ten months after the award against the principal obligor had become final.

The order appealed from is affirmed, with costs against appellant.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

Order affirmed.

[No. L–6505. August 23, 1954]

ASUNCION ROQUE, petitioner, *vs.* HON. DEMETRIO B. ENCARNACION, as Judge of the Court of First Instance of Manila, and FRANCISCO REYES, respondents.

1. SUMMARY JUDGMENTS; ACTION FOR ANNULMENT OF MARRIAGE CANNOT BE DECIDED BY SUMMARY JUDGMENT PROCEEDING.—A counterclaim seeking to annul defendant's marriage to plaintiff, although not denied or resisted by the latter, cannot be decided by summary judgment proceeding,—first, because such action is not one to "recover upon a claim" or "to obtain a declaratory relief," and second, because it is the avowed policy of the State to prohibit annulment of marriages by summary proceedings.

2. ID.; ID.; ABSENCE OF GENUINE ISSUE DOES NOT JUSTIFY MISINTERPRETATION OF RULES OR VIOLATION OF POLICY.—The Rules of Court expressly prohibit annulment of marriages without actual trial (section 10, Rule 35). The mere fact that no genuine issue was presented cannot justify a misinterpretation of the rule or a violation of the avowed policy of the State.

ORIGINAL ACTION in the supreme court. Certiorari, mandamus and prohibition.

The facts are stated in the opinion of the court.

J. C. Orendain, Canuto Pefianco, Jr. & Luz Tordesillas for petitioner.

Celestino L. de Dios and Jose S. Atienza for respondents.

LABRADOR, *J.:*

In Civil case No. 16787 of the Court of First Instance of Manila, entitled Asuncion Roque Reyes *vs.* Francisco Reyes, plaintiff, petitioner herein, alleges that she married defendant in November, 1943, and that out of their marriage two children were born; that during the marriage plaintiff acquired certain personal and real properties which produce a monthly income of ₱3,530; that defendant committed concubinage with a woman named Elena Ebarle, and in 1952 he attempted to take away her life, giving her blows and attempting to strangle her. She, therefore, prays for (*a*) legal separation, (*b*) legal custody of the children, (*c*) liquidation of the conjugal property, and (*d*) alimony and support for the children.

In his answer, the defendant admits their marriage, claiming, however, that it took place in February, 1944, but he denies the alleged concubinage by him and the alleged income of the properties, or the squandering of the same. He presented a counterclaim, alleging that plaintiff was already a married woman when she contracted the marriage with him, having been married with one Policarpio Bayore since February 19, 1930; that she fraudulently represented herself as single, without impediment to contract marriage; that she has been squandering money obtained from him, trying to acquire property in her own name, etc. He prays for (*a*) the annulment of his marriage to plaintiff, (*b*) custody of the children, and (*c*) damages in the amount of ₱30,000. Her answer to the counterclaim is one mainly of denials. As to the express allegation contained in the counterclaim that plaintiff is a married woman at the time of their marriage, plaintiff makes this denial:

> 6. That the plaintiff denies specifically each and every allegation averred in paragraph 6 of the counterclaim, the truth being that said Policarpio Bayora (plaintiff's husband) has been absent for 14 consecutive years.

On October 21, 1952, defendant filed a motion for summary judgment, opposition to which was filed by plaintiff on the ground that an action for annulment can not be a ground for summary judgment. In support of the motion for summary judgment, the deposition of Policarpio Bayore, former husband of the plaintiff, was submitted. A supposed certified copy of his marriage to plaintiff was identified by Bayore at the time of the taking of his deposition. The affidavit of defendant was also submitted in support of the motion. Plaintiff did not present any

affidavit, deposition, or document to support his objection. Without much ado, the trial judge granted the motion for summary judgment, immediately rendering a decision (*a*) declaring plaintiff's marriage to defendant null and void *ab initio,* (*b*) declaring that plaintiff concealed her true status and awarding the custody of the children to defendant, and (*c*) declaring plaintiff's rights to the conjugal properties forfeited in favor of their children, although granting the custody of the smaller child to plaintiff.

The petitioner seeks to annul the judgment on the ground that the trial court had no jurisdiction to render a summary judgment in the action to annul the marriage, and on the further ground that there were real issues of fact raised in the pleadings, as she believed that her husband was already dead at the time of her marriage to defendant, etc.

The plaintiff does not deny the fact that she was married to Policarpio Bayore in the year 1930, and that the latter is alive and the marriage still subsisting. May this counterclaim be decided by the summary judgment proceeding? Our answer must be in the negative, first, because an action to annul a marriage is not an action to "recover upon a claim" or "to obtain a declaratory relief," and, second, because it is the avowed policy of the State to prohibit annulment of marriages by summary proceedings. An action "to recover upon a claim" means an action to recover a debt or liquidated demand for money. This is the restricted application of the rule in jurisdictions where the proceeding has been adopted. In Virginia this proceeding is limited to actions "to recover money"; in Connecticut, New Jersey, and New York, to recover a debt or liquidated demand; in Michigan, for an amount arising out of contract, judgment, or statute; in Columbia, to recover sums of money arising *ex contractu;* in Illinois, for the payment of money; in Delaware, to sums for the payment of money, or recovery of book accounts, or foreign judgments; and in England, in actions upon wills and promissory notes, etc. (Yale Law Journal, Vol. 38, p. 423.) In federal courts the proceeding has been used in patent, copyright, and trade mark cases, and in cases arising upon statutes or undisputed contracts or instruments. (See cases cited in I Moran, 719–726, rev. 1951 ed.)

The fundamental policy of the State, which is predominantly Catholic and considers marriage as indissoluble (there is no divorce under the Civil Code of the Philippines), is to be cautious and strict in granting annulment of marriage (article 88 and 101, Civil Code of the Philippines). Pursuant to this policy, the Rules of Court expressly prohibit annulment of marriages without actual trial (section 10, Rule 35). The mere fact that no genuine issue was presented, and we desire to expedite the dispatch of the case, can not justify a misinterpretation of the rule

we have adopted or a violation of the avowed policy of the State.

We find that the trial court committed an error in annulling the marriage of plaintiff to defendant in a summary judgment proceeding without the formality of a trial. The trial court's error is not, however, limited to this. In spite of the fact that a genuine issue of fact was raised by plaintiff's pretense that she entered the marriage in good faith, this issue was ignored and the court declared her rights to properties obtained during the marriage forfeited, and the custody of one of the children denied to her. These constitute an abuse of judicial discretion amounting to excess of jurisdiction, properly the subject of a proceeding by certiorari.

The judgment entered in the case is hereby annulled, and the lower court is ordered to proceed in the case according to the Rules.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Judgment annulled.

[No. L-6094. August 27, 1954]

TEODORICO SANTOS, plaintiff and appellee, *vs.* CATALINA ICMON, LUISA CORDERO DE PEDREGOSA, JOSE CORDERO, JR. and LORENZO CORDERO, defendants and appellants.

LAND REGISTRATION; CADASTRAL PROCEEDINGS; TRANSFER OF PORTION OF LOT ALREADY ADJUDICATED TO APPLICANT; ORDINARY CASE FOR RECOVERY OF LAND MAY BE INSTITUTED BY TRANSFEREE.—While the transferee of a portion of a lot, already adjudicated to the applicant in a cadastral case, could move for the reopening of the case in the cadastral court before the expiration of one year from entry of the decree, so that he could be given an opportunity to prove his right to the land and get a decree in his favor, said transferee may choose to file an action in the ordinary courts for the recovery of the land, without prejudice to his right to petition in the cadastral case for the subdivision of the lot involved on the bases of the judgment rendered, the segregation of the portion acquired by him, and the adjudication thereof in his name.

APPEAL from a judgment of the Court of First Instance of Leyte. Rodriguez, J.

The facts are stated in the opinion of the court.

Antonio Montilla for defendants and appellants.
Julio Siayngco for plaintiff and appellee.

REYES, J. B. L., *J.:*

This is an appeal interposed by defendants Catalina Icmon and Luisa Cordero de Pedregosa from the decision of the Court of First Instance of Tacloban, Leyte, in Civil

Case No. 135 of that court, declaring the plaintiff Teodorico Santos the owner of the land described in the complaint as follows:

"A portion only of a residential land situated at the Poblacion of the municipality of Burauen, Leyte of approximately 160 square meters in area; covered by Tax Declaration No. 27985—part only; valued at ₱2,230 part; designated as lot 293—portion only of the Burauen Cadastre; and bounded on the North, by S. Agustin St.; on the East, by S. Ramon St.; on the South, by heirs of Candido Masayon, and on the West, by the remaining portion in the name of the Heirs of Jose S. Cordero and evidenced by Certificate of Title No. ——— of the Registry of Deeds for the Province of Leyte." (Record on Appeal, pp. 2–3.)

and ordering the defendants to restore the possession thereof to the plaintiff.

The appeal was originally docketed with the Court of Appeals, but upon motion of the appellee, the case was certified to this court on the ground that the only error assigned by the appellants is a question of law, to wit:

"THE LOWER COURT ERRED IN NOT DISMISSING THE COMPLAINT ON THE GROUND THAT THE ACTION BROUGHT BY THE PLAINTIFF IS NOT THE PROPER REMEDY."

There being no questions of fact raised in this appeal, the following findings of fact of the Court *a quo* are conclusive:

"During the trial it was proved that in the year 1936, Jose S. Cordero, father of the defendants and his heirs, Luisa, Jose Jr., Francisco and Lorenzo, all surnamed Cordero, sold a portion of a parcel of residential lot belonging to the conjugal partnership between said Jose S. Cordero and his first wife the deceased Francisca Tiaoson to Felipe R. Santos by virtue of a document marked Exhibit "A". It is stated in said Exhibit "A" that the whole parcel of land was adjudicated to said Jose S. Cordero by the Cadastral Court in the following proportion: one-half to him and the other half to his children with his first wife, Francisca Tiaoson, above mentioned. That the sale of the portion executed by Jose S. Cordero to Felipe R. Santos appears in a document Exhibit "A" which is a public instrument ratified by a notary public and said portion consist of 160 square meters specifically described in paragraph 2 of the complaint quoted above. That said Felipe R. Santos in turn sold the same portion to one Aurea Espada by virtue of Exhibit "B", also a public instrument ratified by a notary public. It is noteworthy that in Exhibit "B" it is specified as boundary on the western side of the portion subject of the sale the remaining portion, which belongs to Jose S. Cordero. It appears further that in Exhibit "B", the sale of Felipe R. Santos in favor of Aurea Espada, one of the heirs of Jose S. Cordero namely Lorenzo Cordero, signed as witness to said instrument (Exhibit "B"). It was also proven that Aurea Espada who acquired the portion in litigation from Filipe R. Santos sold the same to the herein plaintiff, Teodorico Santos in a deed of sale marked Exhibit "C" also a public instrument ratified before a notary public. That since the purchase by the plaintiff of the portion of the land in question he has been paying the taxes corresponding thereto.

"The defendants do not deny the successive transfer of the portion from the original owner, Jose S. Cordero to Felipe R. Santos,

from the latter to Aurea Espada and finally to Teodorico Santos. They claimed however that the said portion of land consisting of 160 square meters and forming part of lot No. 293 of the Cadastral Survey of Burauen, Leyte, having been claimed by Jose S. Cordero in the Cadastral hearing and the same having been adjudicated in his favor as an undivided property between him and his children already mentioned and there having no sub-division effected so far between the co-owners and the shares not having been divided by metes and bound the sale effected by Jose S. Cordero with specific boundaries has no legal effect and cannot set aside the decision of the Cadastral Court adjudicating said land to Jose S. Cordero and his children.

"The Court is of the opinion and so holds that the sale made by Jose S. Cordero of the portion of land in litigation to Felipe R. Santos is valid and being so the subsequent transfer of said portion from Felipe R. Santos to Aurea Espada and from the latter to Teodorico Santos, the herein plaintiff, is also valid.

"It is not disputed that Jose S. Cordero is a co-owner of the lot a portion of which is the land in question, the same being a conjugal property with his first wife Francisca Tiaoson and therefore one-half of it corresponds to him. The whole lot contains an area of 596 square meters (Exhibit "2") his share therefore is 298 square meters. It is also an established fact that he executed the sale of the portion belonging to him consisting of 160 square meters to Felipe R. Santos in January 1936 after the death of his first wife Francisca Tiaoson. The right of Jose S. Cordero to dispose of a portion of the lot owned by him as his share can not be disputed. The mere fact that no subdivision has been done so far of the whole lot between the co-owners do not deprive Jose S. Cordero of his right to the lawful disposition of his share.

"The contention of the defendant that the sale made by Jose S. Cordero of a portion of the undivided property having been done by metes and bounds is illegal, does not hold water considering that when Jose S. Cordero sold said portion to Felipe R. Santos by virtue of Exhibit "A" his children were present and saw while the vendor was indicating the boundaries of the portion sold to the vendee which is tantamount to an acquiescence of what their father Jose S. Cordero was doing, and this implied consent on the part of Lorenzo Cordero one of his sons and a co-owner of the lot from which the portion sold was taken became more manifest when he signed as a witness in the deed of sale executed by Felipe R. Santos of the same portion now subject of litigation to Aurea Espada, the predecessor in interest of the herein plaintiff. It is noteworthy that the defendants Jose S. Cordero, Jr., Lorenzo and Francisco Cordero, children of Jose Cordero, Sr., and co-owners of the land a portion of which is subject of this controversy, did not even bother themselves to answer the complaint." (Record on Appeal, pp. 17–22.)

As already stated, only one argument is advanced by appellants for the reversal of the decision appealed from, namely: that the decision of June 19, 1941 in the cadastral proceeding adjudicating the land in question to Jose Cordero, Sr. and his children being now final and unappealable, and there being no entry of the decree of registration up to this time, the proper remedy of the plaintiff-appellee is to file a petition for review in the cadastral case on the ground of fraud under article 38 of Act 496, and not this independent action for the recovery of the property.

We find no merit in the above argument. It is to be borne in mind that under the Land Registration Act, a petition for review may be filed only by a person who has been deprived of his title to, right, or interest in property by *reason of fraud* (of the applicant), calculated to deprive the interested party of his day in court, and preventing him from asserting his right to the property registered in the name of the applicant (Grey Alba *vs.* De la Cruz, 17 Phil., 49; Ruiz *vs.* Lacsamana, 32 Phil., 653; Dizon *vs.* Lacap, 50 Phil., 193). It has neither been alleged nor proved in this case that the applicant Jose Cordero, Sr. procured the registration of the land in question in his name in fraud of the rights of the plaintiff-appellee or his predecessors-interest, all of whom derive their title from said applicant; consequently, a petition for review of the decision in the cadastral case would not lie.

It is true that under previous rulings of this court, appellee could have moved for the reopening of the case in the cadastral court so that he could be given an opportunity to prove his right to the land in question and get a decree in his favor, since the adjudication of land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree, and until then the court rendering the decree may, after hearing, set aside the decision or decree and adjudicate the land to another person (Afalla and Pinaroc *vs.* Rosauro, 60 Phil., 622; Valmonte *vs.* Afable, 47 Off. Gaz., 2917; Capio *vs.* Capio, December 21, 1953, L–5761). But appellee chose instead to file this independent action for the recovery of the land in question; and as the lower court has conclusively found, and the appellants do not now contest, that the appellee is entitled to the ownership and possession thereof by virtue of his acquisition of said land in 1946 from Aurea Espada, the transferee of Felipe R. Santos, to whom the original owner Jose S. Cordero, Sr. had validly conveyed his interests thereto, we find no practical reason why the decision of the lower court in this case should not be affirmed, without prejudice to the plaintiff-appellee's right to petition in the cadastral case for the subdivision of lot 293 of the Burauen Cadastre, the segregation of the portion acquired by him, and the adjudication thereof in his name.

Wherefore, the decision appealed from is affirmed with costs against the appellants.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

Judgment affirmed.

[No. L-5340. 31 August 1954]

ANDRES ACHONDOA, plaintiff and appellant, *vs.* MARCELO ROTEA, JOAQUINA ROTEA, BEATRIZ ROTEA and PASTORA ROTEA, defendants and appellees.

OBLIGATIONS AND CONTRACTS; SALES; SALE MADE IN GOOD FAITH AND EVIDENCED BY A PUBLIC DOCUMENT CAN BE RESCINDED ONLY ON GROUNDS PROVIDED FOR BY LAW.—Where the transfer and assignment by the defendants to their brother of a sugar cane mill was ineffective and invalid because of the objection of their father who was a co-owner thereof, the subsequent sale by the defendants to the plaintiff of the same mill in good faith and at the latter's insistent requests and evidenced by a document acknowledged before a notary public cannot be rescinded except on grounds provided for by law.

APPEAL from an order of the Court of First Instance of Misamis Occidental. Ceniza, J.

The facts are stated in the opinion of the court.

Francisco Capistrano, Jr. for plaintiff and appellant.

Felix Mercader, Briones & Pascual for defendants and appellees.

PADILLA, *J.:*

On 20 March 1933 Joaquina, Beatriz and Pastora surnamed Rotea, the last two represented by their attorney-in-fact Marcelo Rotea, for and in consideration of ₱1,800, conveyed and sold to Andrés Achondoa a steam sugar cane mill, 12 H. P., manufactured by A. & W. Smith & Company, Ltd., Glasgow, together with its boiler, 14 H. P., a carriage and caldrons, the sale being evidenced by an instrument acknowledged before notary public José M. Romero (Exhibit M). But prior to that sale or on 18 February 1932, Marcelo Rotea, in his behalf and in behalf of Joaquina, Pastora and Beatriz, transferred and assigned to his brother José Rotea the same steam sugar cane mill found in the *Hacienda San Rafael* in the municipality of Tanjay, Oriental Negros (Exhibit O). Andrés Achondoa sent Manuel Bastida, a mechanic, to the *Hacienda San Rafael* who took possession of the mill, dismounted it partly, took and sent some parts thereof to the land of Achondoa in the barrio of Tipanoy, municipality of Iligan, Province of Lanao. While Manuel Bastida was thus engaged in dismounting the mill, Laureano Flores, to whom José Rotea allegedly had sold the steam sugar cane mill, brought an action in the Court of First Instance of Oriental Negros to be declared owner of the steam sugar cane mill, to prevent Achondoa and his mechanic Bastida from dismounting, removing and transporting the said steam sugar cane mill or parts thereof, to enjoin perpetually the defendants from molesting him in the enjoyment of the possession of said steam sugar cane mill, and to recover damages and costs (Civil Case No. 826,

Court of First Instance of Oriental Negros; Exhibit A). After hearing the Court of First Instance of Oriental Negros rendered judgment declaring Laureano Flores owner of the steam sugar cane mill and all its accessories, making final the writ of preliminary injunction issued against Achondoa and Bastida, their agents and representatives, and ordering them to pay the costs. On appeal the Court of Appeals reversed the judgment of the trial court and held that Andrés Achondoa was the lawful owner of the mill because as vendee he was the first to take possession thereof. As to the counterclaim for damages in the sum of ₱32,000, the Court of Appeals held that the amount of damages allegedly suffered by Andrés Achondoa was of speculative character, because he was found to have been planting sugar cane in the tract of land where the mill was to be installed and used since 1931, or long before he bought the sugar mill in litigation. The judgment of the appellate court reserved to Laureano Flores whatever right he may have against José Rotea (Exhibit B). The judgment of the Court of Appeals just referred to was promulgated on 29 December 1939. But on 29 June 1939, or before the appeal was decided by the Court of Appeals, Andrés Achondoa commenced this action against Marcelo, Joaquina, Beatriz and Pastora surnamed Rotea in the Court of First Instance of Occidental Misamis to rescind the contract entered into on 20 March 1933 by and between him and the Roteas (Exhibit M), and to recover from the defendants the sum of ₱1,800, the purchase price paid by him for the steam sugar cane mill, together with lawful interest thereon from that day, the further sum of ₱51,000 as damages and costs. After summons the defendants filed a general denial answer to forestall their being declared in default. On 11 December 1940, the date set for the hearing of the case, the attorney for the defendants sent a telegram to the court praying for the continuance of the hearing as he was busy then appearing in a case in the Manila court, but the motion was denied and the plaintiff allowed to present his evidence in the absence of the defendants and their attorney. On 22 March 1941, the Court of First Instance of Occidental Misamis rendered judgment rescinding the contract of purchase and sale of the sugar cane mill executed by and between the plaintiff and the defendants and ordering the latter to pay back to the former the sum of ₱1,800, the purchase price of the mill, together with lawful interest from 20 March 1933, the further sum of ₱75,223.25 as damages and costs. A motion to set aside the judgment and for a new trial was denied. The defendants appealed. Briefs were filed but before judgment could be rendered the Pacific war broke out and the record was destroyed during the battle for libera-

tion of the City of Manila. Steps were taken to have the record reconstituted and on 13 November 1947 this Court adopted the following resolution:

> In reconstitution Case G. R. No. L–1256, Achondoa *vs.* Rotea et als., the Court ordered that a new trial be held in the Court of First Instance of Occidental Misamis for the purpose of receiving evidence not yet of record.

On 16 October 1948, the defendants filed an amended answer alleging that after the contract was executed and receipt of the purchase price, they made delivery of the steam sugar cane mill to the plaintiff, by placing him in material possession thereof, so much so that many of its parts were already sent to Iligan by the plaintiff; that if the whole mill was not fully dismounted and sent to its destination, it was due to causes beyond the control and will of the defendants and without any fault on their part, because Laureano Flores instituted the action already referred to against Andrés Achondoa et al.; that in said case the Court of Appeals declared Andrés Achondoa the lawful owner of the steam sugar cane mill because he took possession thereof and that the question of damages allegedly suffered by Andrés Achondoa was threshed out, passed upon and decided by the Court of Appeals in the case referred to between Laureano Flores, on the one hand, and Andrés Achondoa and Manuel Bastida, on the other. By way of special defense, Marcelo Rotea in his own behalf and as judicial administrator of his co-defendants, the late Joaquina, Beatriz and Pastora surnamed Rotea, alleged that they had acted in good faith in entering into the contract of purchase and sale of the mill; that they did not know the purpose for which the plaintiff acquired the mill; that if they did finally consent to sell it to him it was due to the latter's request and insistence; that they were not aware of the alleged sale of the mill by their brother José Rotea to Laureano Flores; that a few days after Marcelo Rotea had assigned and transferred the mill in question to his brother José, which transfer was subject to the approval of their father, José Rotea was notified by telegram by his father objecting to the assignment and transfer of the mill to him; that until the time the action was instituted by Laureano Flores and injunction issued by the Court of First Instance of Oriental Negros, the defendants did not know nor were they aware that there had been such cession or assignment of the mill to Laureano Flores as there had been no prior valid assignment thereof to José Rotea, the predecessor or vendor of Laureano Flores; that the validity of the sale made by the defendants to the plaintiff has already been passed upon and decided by the Court of Appeals and is now *res judicata;* that after the institution of the action by Laureano Flores against the herein plain-

tiff Achondoa, as evidence of their good faith the defendants engaged the services of an attorney to defend the herein plaintiff, then defendant, paid for the attorney's fees, presented witnesses to the court, secured and furnished the attorney with documentary evidence, and paid the expenses incurred in connection with the appeal to the Court of Appeals after an adverse judgment had been rendered by the Court of First Instance of Oriental Negros which was reversed by the Court of Appeals; that damages allegedly suffered by the plaintiff, if any, could not be laid upon the defendants; that it is not true that the plaintiff planted sugar cane in his land in Iligan in 1933 only when he acquired by purchase the mill, because the plaintiff had planted sugar cane in the land since 1931. The admission of this amended answer was objected to by the plaintiff. After hearing at which the defendants presented their evidence, the record was forwarded to this Court for final disposition, but on 6 March 1950 the record was returned to the trial court pursuant to the following resolution:

> In reconstitution case L–1256, Andrés Achondoa *vs.* Marcelo Rotea, et al., in which a new trial was held in the Court of First Instance of Misamis Occidental for the reception of evidence not yet of record, the Court ordered that said case be returned to said Court of First Instance for new decision as in a new trial.

Conformably thereto, the Court of First Instance of Occidental Misamis rendered judgment dismissing the complaint, with costs against the plaintiff. A motion for new trial was denied. Hence this appeal.

The evidence shows that the sale by the defendants to the plaintiff of the mill in question was made in good faith and at the latter's insistent requests and that the transfer or assignment of the mill to José Rotea was ineffective and invalid because of the objection of their father Luis Rotea who was a co-owner of the mill. Not only did Luis Rotea express his objection to the assignment of the mill to his son José Rotea in a telegram sent from Manila to Emeteria Gonzales on 22 February 1932 (Exhibit I), but also in his letter to his children dated 25 February 1932 (Exhibit K). Granting that Laureano Flores did not know of such objection, still the fact remains that as the assignment by way of donation to José Rotea, the predecessor and vendor of Laureano Flores, was made in a private instrument it could not prevail over the sale of the mill made in a public document to Andrés Achondoa who took possession thereof. A consummated sale cannot be resolved but only upon certain grounds provided for by law. If he failed to dismount completely and ship the whole mill to his land in barrio Tipanoy, municipality of Iligan, Province of Lanao, it was not due to any fault imputable to the defendants, for as

vendors in good faith of the mill sold they did all what was expected of them. Not only did the vendors place the vendee in possession of the mill but also when his possession was disturbed by the filing of an action in which a writ of preliminary injunction was issued against him (the vendee), they (the vendors) engaged and paid for the services of an attorney to defend the sale made by them to him and furnished the attorney with witnesses and documentary evidence necessary for his defense and when the case was decided adversely against the vendee they will the latter's consent caused the case to be appealed to the Court of Appeals and secured a reversal of the judgment.

In the case appealed to the Court of Appeals, the vendee, then defendant-appellant, set up a counterclaim for ₱32,000 for his failure to make use of the mill because of the injunction issued by the Court of First Instance of Oriental Negros. Passing upon that point of damages for ₱32,000 allegedly suffered by the then defendant-appellant, the Court of Appeals held that said damages were of speculative character and dismissed the counterclaim.

It appearing that in 1933 the plaintiff-appellant planted his land in Iligan with sugar cane not in anticipation or expectation that he would acquire the mill from the defendants, because in 1931, or two years before, he had planted it with sugar cane, the claim for damages of Andrés Achondoa is without basis in law and in fact.

The judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, A, Jugo, Bautista Angelo, Labrador, Concepcion and *Reyes, J. B. L., JJ.*, concur.

Judgment affirmed.

[No. L-6008. August 31, 1954]

NICANOR PADILLA, plaintiff and appellee, *vs.* ANDRES DE JESUS, PABLO DE JESUS, JOSEFA DE JESUS, DOROTEO CELIS, Jr., NATIVIDAD DE JESUS, ROMEO MORALES and MANUEL DE JESUS, defendants and appellants.

EJECTMENT; JURISDICTION; EXISTENCE OF ANOTHER ACTION TO ANNUL MORTGAGE OF THE PROPERTY DOES NOT DEPRIVE THE MUNICIPAL COURT TO TRY CASE OF EJECTMENT.—The circumstance that there is pending in the court of first instance a case in which defendants are seeking the annulment of the deed of mortgage of the property in question, executed by their father without their knowledge and consent, cannot and does not deprive the municipal court of its jurisdiction to try the ejectment case filed against them by the plaintiff, in the light of the fact averred in the complaint for ejectment, and supported by evidence, that plaintiff is the exclusive owner of the property in question, having purchased it at an auction sale in 1948.

APPEAL from a judgment of the Court of First Instance of Manila. Macadaeg, J.

The facts are stated in the opinion of the court.

Macario Guevarra for defendants and appellants.
Padilla, Carlos & Fernando for plaintiff and appellee.

BAUTISTA ANGELO, *J.:*

On August 24, 1950, plaintiff filed an action for ejectment in the Municipal Court of Manila against defendants to recover the possession of a parcel of land located at Paco, Manila.

On September 7, 1950, defendants filed a motion to dismiss on the grounds, (1) that there is another case pending in the Court of First Instance of Manila between the same parties and over the same subject-matter; (2) that the claim sought by plaintiff has been condoned; and (3) that the court has no jurisdiction over the subject-matter of the action. Plaintiff filed an opposition to this motion but the same was denied.

On November 27, 1950, defendants filed their answer setting up certain special defenses and a counterclaim. Plaintiff filed a motion to dismiss the counterclaim, to which defendants filed a written opposition. After the reception of the evidence, the court rendered judgment ordering the defendants to vacate the property involved and to pay the plaintiff a monthly rental of ₱100 from October, 1949 up to the time the defendants shall have vacated the property, and the costs of action.

On June 2, 1951, defendants filed a motion for reconsideration and the same having been denied, they brought the case on appeal to the Court of First Instance where they filed another motion to dismiss based on the same grounds set forth in the municipal court. This motion was also denied for lack of merit.

On August 14, 1951, defendants filed their answer wherein they reiterated the same special defenses and counterclaim they set up in the municipal court. Plaintiff moved to dismiss the counterclaim, and this motion was granted.

When case was called for hearing on March 14, 1952, defendants moved for postponement on the ground that their principal witness could not be present. Counsel for the plaintiff objected to the postponement. However, the parties agreed to hear the testimony of one L. G. Marquez, an expert witness for the plaintiff, who testified and was cross-examined by counsel for the defendants. Thereafter, upon agreement of the parties, the continuation of the hearing was set for March 24, 1952.

When the case was called for the continuation of the hearing on said date, neither the defendants, nor their counsel, appeared, whereupon the court allowed the plaintiff to

present his evidence, and on March 25, 1952, it rendered decision ordering defendants to vacate the property and to pay a monthly rental of ₱200 from October, 1949, until the time they shall have actually surrendered the property, with costs.

On April 14, 1952, defendants filed a motion for reconsideration and new trial, accompanied by affidavits of merit, on the ground that their failure to appear on March 24, 1952 was due to "mistake and excusable negligence" as provided for in section 1 (*a*), Rule 37, of the Rules of Court. And when this motion was denied, defendants took the case directly to this court imputing three errors to the lower court.

Defendants contend that the municipal court has no jurisdiction to entertain the case because, in their answer, they averred that, long before the filing of the present case of ejectment, they had filed against the plaintiff in the Court of First Instance of Manila a case in which they seek the annulment of the deed of mortgage executed by Roman de Jesus, their father, without their knowledge and consent, on a property which belonged to the spouses Roman de Jesus and Maria Angeles, and that, inasmuch as the annulment case, wherein the ownership of the property is in issue, is still pending determination, the municipal court has no jurisdiction over the ejectment case upon the theory that the same cannot be determined without first passing upon the question of ownership of the property.

This contention cannot be sustained in the light of the facts averred in the complaint which appear supported by the evidence submitted by the plaintiff. These facts show that the plaintiff is the exclusive owner of the property in question having purchased it at the auction sale carried out by the sheriff sometime in October, 1948, and that because of the failure of the mortgagor, or his successors in interest, to redeem it within the period of redemption, the Register of Deeds of Manila issued Transfer Certificate of Title No. 23590 in favor of the plaintiff. The facts also show that after plaintiff had become the owner of the property he found the defendants occupying it without having entered into a contract of lease with him, or having made any arrangement for its occupancy, or without paying any rental therefore, and for this reason, he filed this ejectment case against them before the municipal court. These facts clearly show that this case comes within the jurisdiction of the municipal court. The circumstance that there is pending in the court of first instance a case in which defendants are claiming one-half of the property as heirs of the deceased wife of the mortgager cannot and does not deprive the municipal court of its jurisdiction. The most that could be done in the light of the present situation is to suspend the trial of the ejectment case pending final determi-

nation of the annulment case, but the pendency of the latter cannot have the effect of removing the former from the jurisdiction of the municipal court.

This case may be likened to that of Fulgencio *vs.* Natividad, 45 Off. Gaz., No. 9, 3794, decided on February 14, 1948, in which petitioner pleaded that, before the complaint for detainer was filed against him, he had brought an action in the proper court to compel the respondents to resell to him the lot and the house erected thereon upon payment of the purchase price, and, therefore, the case does not come within the jurisdiction of the municipal court. In overruling this plea, this Court said: "Granting that petitioner has the right to repurchase the property, he cannot invoke it until after the competent court shall have rendered judgment as prayed for by him. Hence the allegation in the detainer case that he had brought an action in the proper court to compel the resale to him of the lot and the house erected thereon, did not raise the question of title to the property and for that reason did not remove the case from the jurisdiction of the municipal court. As already stated, the plea of another pending action to compel the resale to the petitioner of the property involved in the detainer case is an admission that the title thereto is not vested in him. Such being the case, the municipal court had jurisdiction to try and decide the detainer case."

A different consideration, however, should be made in connection with the second issue to the effect that the lower court erred in denying the motion for reconsideration of the defendants notwithstanding the explanation given by them of their failure to appear at the continuation of the trial and the affidavits of merit attached to the motion showing unmistakably that such failure was due to "mistake and excusable negligence" and not for purposes of delay.

It should be recalled that when this case was called for hearing on March 14, 1952, counsel for defendants moved for postponement on the ground that their principal witness was sick and could not appear. Counsel for the plaintiff objected to the postponement. However, the parties agreed to hear the testimony of one L. G. Marquez, a witness for the plaintiff, who testified and was cross-examined by counsel for defendants. Thereafter, upon agreement of the parties, the continuation of the hearing was set for March 24, 1952. And when the case was called for continuation on that date, neither defendants, nor their counsel, appeared. Nevertheless, the court allowed the plaintiff to present his evidence, and thereafter rendered decision accordingly. But when, days after, defendants filed a motion for reconsideration explaining that their failure to appear was due to "mistake and excusable negligence" of their counsel, supporting their claim with the requisite affidavits of merit, the court curtly denied the motion.

We believe that, in the light of the circumstances of the case, the court did not act properly when it denied said motion for reconsideration considering the explanation given by defendants and their counsel in their affidavits of merit. This is what counsel says in his affidavit: "That upon motion of the undersigned affiant, the Honorable Judge Higinio Macadaeg postponed the hearing of said case on March 24, 1952, but the undersigned affiant in noting the date of the postponement on his dairy or memorandum, committed an honest mistake by noting it down opposite March 25, 1952, instead of March 24, 1952, consequently he was not able to appear in court on the proper date, and so with the defendants, as they were of the belief that the hearing was on March 25, 1952 and not on March 24, 1952." And these facts also appear in the affidavits subscribed to by the defendants.

These facts, which are not contradicted, constitute in our opinion a proper ground for a new trial under section 1 (a), Rule 37, for, no doubt, they constitute "mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights." This is more so considering that, according to the answer, defendants have a meritorious defense.

Wherefore, the decision appealed from is reversed. It is ordered that this case be remanded to the lower court for a new trial with the understanding that the new trial should await the final termination of the annulment case pending in the Court of First Instance of Manila (Civil Case No. 11267), without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, Montemayor, and *Jugo, JJ.,* concur.

REYES, J. B. L., *J.:*

I concur in the result, reserving my vote on the question of jurisdiction.

LABRADOR, *J.,* dissenting:

I dissent.

The land subject of the action appears to have been conjugal property of the deceased Roman de Jesus and his wife, whose successors in interest are the defendants-appellants. The deceased Roman de Jesus mortgaged the property to plaintiff-appellee, it is true, but the mortgage affected only his undivided one-half share in the property. The action by the defendants-appellants to annul the mortgage over their undivided one-half share necessarily involved both title to the property and the right to the possession thereof. The present action of plaintiff-appellee really and actually, under the circumstances, involves or should involve both the title and the right to possession. The action presented by

defendants-appellants to annul the mortgage over their share bars the present action, therefore. And as the issue really involved is title, the municipal court which entertained the action of unlawful detainer has no jurisdiction. The action should, therefore, be dismissed on two grounds. lack of jurisdiction and pendency of another action between the same parties over the same cause. Nothing can be gained by the continuation of the case in the court below.

Judgment reversed.

[No. L-6259. August 31, 1954]

(PABLO MANLAPIT, ET AL.) VALENTIN C. GARCIA, petitioner, *vs.* LAND SETTLEMENT AND DEVELOPMENT CORPORATION, respondent.

ADMINISTRATIVE LAW; PUBLIC OFFICERS; SUSPENSION OF AN EMPLOYEE PENDING ADMINISTRATIVE INVESTIGATION IS NOT DISMISSAL; EMPLOYEE IS ENTITLED TO GRATUITY AND MONEY VALUE OF VACATION AND SICK LEAVES.—Where the administrative investigation of a government owned corporation employee did not end in his removal or discharge, he is entitled to the gratuities and cash value of the unenjoyed vacation and sick leaves granted to laid-off officers and employees due to the retrenchment policy of the corporation, the approval of his reinstatement by the Board of Directors being unnecessary.

PETITION to review on certiorari an order of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Teodolo M. Cruz for petitioner.

Jaime E. Ilagan for respondent Court of Industrial Relations.

REYES, J. B. L., *J.*:

This is a petition for certiorari to review a portion of the decision of the Court of Industrial Relations, in its Case No. 422-V, denying the petition of Valentin Garcia for gratuity and back pay by the Land Settlement and Development Corporation, hereafter termed LASEDECO.

The record is to the effect that on April 17, 1950, the Board of Directors of the National Land Settlement Administration (NLSA), by resolution No. 570, laid-off several of its officers and employees, effective as of May 16, 1950, on account of lack of funds, but granting them whatever benefits and privileges that may be granted to laid-off officers and employees of the government and/or government owned or controlled corporations. Subsequently, the laid-off personnel instituted these proceedings in the Court of Industrial Relations (Case No. 422-V) to secure reappointment and for payment of their gratuity and the money value of their unenjoyed vacation and sick leaves. After

hearing the evidence for the petitioners and that of the respondent Land Settlement and Development Corporation (LASEDECO), which had substituted and taken over the NLSA on October 23, 1950, by virtue of Executive Order No. 335, of His Excellency, the President of the Philippines, the Court of Industrial Relations rendered a decision ordering the payment of the gratuities and cash value of the unenjoyed vacation and sick leaves of the petitioners. But with respect with one of the petitioners, Valentin Garcia, the Court made the following findings:

"RE-VALENTIN C. GARCIA

This petitioner claims that he was one of the laid-off NLSA employees. Respondent denies this claim on the ground that, after Garcia was suspended from the service of the NLSA by Manager Paguia, he was never legally reinstated thereto. Counsel for the respondent correctly summarized the case of Valentin Garcia as follows:

'Garcia, Acting Officer-in-Charge and Accountant of the Koronadal Valley Project of the NLSA was suspended by the Manager for illegal disposition of cattle. A committee was created to investigate him. At the same time, a criminal complaint was filed against him for malversation of public property. The criminal complaint was dismissed for insufficiency of evidence. Similarly, the investigating committee recommended his exoneration. Under the circumstances, Manager Paguia reinstated Garcia, who, in no time, submitted a voucher covering his salary during the period of his suspension for the approval of the NLSA Board of Directors. The Board under Resolution No. 552, indorsed Garcia's voucher to the NLSA Auditor for comment and recommendation (Exhibit "1"). The NLSA Auditor in a 2nd Indorsement (Exhibit "2-A") returned Garcia's papers to the Manager, explaining that pursuant to Commonwealth Act No. 441 (Exhibit "16"), the reinstatement of Garcia should be approved first by the Board of Directors before payment of his claim could be made. In the meantime, Executive Order No. 355 abolishing the NLSA and creating the LASEDECO was promulgated. So Garcia submitted his claim to the LASEDECO, through its General Manager, Felix D. Maramba. On May 2, 1951, the latter made Report No. 31, s. 1951 (Exhibit "3") to the LASEDECO Board of Directors ignoring the recommendation of the NLSA investigating committee. On the strength of the report of Manager Maramba, the LASEDECO Board of Directors approved Resolution No. 256 (Exhibit "1"), the pertinent portions of which are quoted hereunder:

> '1. That Valentin C. Garcia be considered as dismissed from the service effective as of the date of his suspension; Provided that the salary received by him from the time of his recall to resume his duties shall be considered as earned for services rendered during the pendency of the administrative case against him.'

Since the NLSA Board of Directors failed to act on Garcia's exoneration by the NLSA Investigating Committee and Manager Paguia, said decision never became final. And because Garcia's reinstatement was not approved by said Board of Directors, Garcia lost his status of employee of the NLSA. The Court fails to find justification for altering or modifying the action taken by the LASEDECO on Garcia's claim." (Pages 6-7, Annex "I" of petition)

In view of the unfavorable decision against him, appellant Garcia appealed to this Court, alleging that in its decision the Court of Industrial Relations committed grave errors of law and serious abuse of judicial discretion.

We are of the opinion that the decision appealed from is in error in holding that "because Garcia's reinstatement was not approved by said Board of Directors, Garcia lost his status of employee of the NLSA," and therefore, he could not lay claim to the benefits of its Resolution No. 570 that, according to the Court of Industrial Relations, entitled the laid-off employees to the gratuity provided for by section 45 of Executive Order No. 392, and to the money value of their accrued vacation and sick leaves.

When appellant Garcia was suspended by the NLSA manager pending his administrative investigation, he did not thereby cease to be an employee of the NLSA; otherwise, he could not have been subjected thereafter to administrative investigation by the NLSA management. And when the manager later recalled him to duty, Garcia underwent no change in his status, and remained as much an employee of the NLSA as he was before suspension. The Board of Directors of the NLSA was not called upon to approve a reinstatement that had produced no change in the status of the employee and which was neither an appointment nor a dismissal.

Commonwealth Act No. 441, creating the NLSA, only provides in its section 5 that "The Manager shall, subject to the approval of the Board, *appoint* such technical, clerical and other employees as may be necessary," but the section is silent as to reinstatements and removals. Evidently, the section refers to original appointments that create the relation of employer and employee. The recall of Garcia could not have that effect, because the relation already existed.

The respondent corporation invokes section 12(*d*) of Executive Order No. 399, the Uniform Charter For All Government Corporations. This provision reproduces section 6(*d*) of Executive Order No. 355 creating the Land Settlement Administration, to the effect that the Manager has power

> "with the approval of the Board, to remove, suspend or otherwise discipline, for cause, any subordinate employee of the Corporation."

In the first place, Executive Order No. 355, promulgated on October 23, 1950, and the subsequent Executive Order No. 399, issued in January, 1951, could not retroactively apply to appellant Garcia, who was separated and laid off as early as May, 1950, to the prejudice of the latter. But granting that they could apply, still the provisions quoted do not refer to reinstatements to duty, since these are neither removals nor suspensions, nor acts of dis-

cipline for cause. Hence, even under the Executive Orders invoked, the approval of the reinstatement of Garcia by the Board of Directors was unnecessary.

We are thus led to the conclusion that since the administrative investigation of the appellant Valentin Garcia did not end in his removal or discharge, said appellant was and remained an employee of the defunct NLSA and did not lose that status until he was laid-off definitely in May, 1950, due to lack of funds that forced the corporation "to adopt a retrenchment policy or reducing its personnel to the minimum", as expressed in the Board of Directors' Resolution No. 570, quoted in the decision of the Court of Industrial Relations. The latter was, therefore, not justified in denying to said appellant the gratuities it awarded to the other laid-off employees of the NLSA.

This conclusion is not altered by the fact that the Board of Directors of the respondent LASEDECO adopted on May 31, 1951 (one year after Garcia was separated or laid-off) a resolution (No. 256) "that Mr. Valentin C. Garcia be considered as dismissed from the service effective as of the date of his suspension". Garcia was no longer in the service when the LASEDECO was created (in October of 1950) and was not of the personnel that the LASEDECO took over from the NLSA; the LASEDECO Directors could not decree the dismissal of one who had never become their employee. The fact that Garcia resubmitted to the LASEDECO the claim he originally filed with the NLSA for payment of salary during the period of his suspension, did not constitute a recognition that he was or had been a LASEDECO employee; the claim was but a consequence of section 13 of Executive Order No. 355 transferring to the LASEDECO all "assets, rights, choses in action, *obligations and liabilities*" of the NLSA.

Wherefore, the decision appealed from is reversed in so far as appellant Valentin Garcia is concerned; and the records are ordered remanded to the Court of Industrial Relations for ascertainment of the benefits to which said Valentin Garcia may be entitled, on the same basis as the other personnel of the National Land Settlement Administration who were laid-off pursuant to its Resolution No. 570.

Costs against respondent Land Settlement and Development Corporation.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Bautista Angelo, and *Concepcion, JJ., concur.*

Decision appealed from reversed and records ordered remanded to the Court of Industrial Relations.

[No. L-6628. August 31, 1954]

JUAN GALANZA, plaintiff and appellee, *vs.* SOTERO N. NUESA, defendant and appellant

PURCHASE AND SALE; RIGHT OF REPURCHASE; STIPULATION ON THE PERIOD OF REPURCHASE; EFFECT OF REGISTRATION OR PERIOD FOR LEGAL REDEMPTION.—The parties to a sale with *pacto de retro* may stipulate on the period for redemption, unaffected by registration or by section 119 of Commonwealth Act No. 141.

APPEAL from a judgment of the Court of First Instance of Isabela. Arranz, J.

The facts are stated in the opinion of the court.

Alejo Mabanag and *Mauro Verzosa* for defendant and appellant.

Fidel Sor. Mangonon for plaintiff and appellee.

PARÁS, *C. J.:*

The plaintiff Juan Galanza owned a parcel of land covered by original certificate of title No. I-2247 issued on July 23, 1934, and acquired as a homestead. On September 7, 1940, he sold said land to the defendant Sotero N. Nuesa with a right of repurchase within 5 years from the date of execution of the deed of sale. The original certificate of title No. I-2247 was not cancelled until July 17, 1947, when a transfer certificate of title No. T-172 was issued in the name of the defendant. On May 19, 1951, the plaintiff instituted in the Court of First Instance of Isabela a complaint against the defendant, praying that the latter be ordered to reconvey the land to the plaintiff in accordance with section 119 of Commonwealth Act 141. In his answer, the defendant set up the special defense that the plaintiff had failed to exercise his right of redemption within the period stipulated in the deed of sale executed on September 7, 1940, and that therefore the title to the property had already consolidated in the defendant. The parties entered into an agreement of facts, and the Court of First Instance of Isabela, on June 23, 1952, rendered a decision ordering the defendant to convey to the plaintiff the land in question, upon payment by the plaintiff to the defendant of the sum of ₱1,328 as the repurchase price, and ordering the Register of Deeds of Isabela to cancel transfer certificate of title No. T-172 and issue another in the name of the plaintiff, after the proper deed of reconveyance shall have been presented for registration, without pronouncement as to damages and costs. From this decision the defendant has appealed.

The question that arises, as expressly framed in the stipulation of facts is "whether the period to repurchase the land in question shall be counted from the execution of the deed of sale with right to repurchase or from the

issuance of transfer certificate of title of the herein defendant." The trial court held that the 5-year period of repurchase should be computed from the day the deed of sale with *pacto de retro* was registered on January 17, 1947, applying section 50 of the Land Registration Law which provides that "the act of registration shall be the operative act to convey and affect the land." In his brief, counsel for the plaintiff-appellee admits that the latter's right of repurchase under the deed of sale executed on September 7, 1940, had already expired, but it is contended that the present action is based on the right of repurchase granted by section 119 of Commonwealth Act 141 which provides that "Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of 5 years"; and that the term "conveyance" imports the transfer of legal title, which in the present case took place only after the issuance of the transfer certificate of title in the name of the defendant-appellant.

In our opinion, appellant's title had already become absolute, because of appellee's failure to redeem the land within five years from September 7, 1940. Both under section 50 of the Land Registration Law and under section 119 of Commonwealth Act 141, the owner of a piece of land is neither prohibited nor precluded from binding himself to an agreement whereby his right of repurchase is for a certain period starting from the date of the deed of sale. Indeed section 50 of the Land Registration Law provides that, even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third parties arising from subsequent alienations by the vendor, and is certainly not necessary to give effect, as between the parties, to their deed of sale. In the case of Carillo *vs.* Salak, G. R. No. L–4133, May 13, 1952, we made the following applicable pronouncement: "While we admit that the sale has not been registered in the office of the register of deeds, nor annotated on the torrens title covering it, such technical deficiency does not render the transaction ineffective nor does it convert it into a mere monetary obligation, but simply renders it ineffective against third persons. Said transaction is, however, valid and binding against the parties.

In the stipulation of facts, it is provided that in case judgment be in favor of the defendant, "the plaintiff will pay the amount of ₱500 to the defendant in concept of damages suffered." Even so, we are inclined to disallow appellant's claim for damages, in the same manner that, in the appealed decision, no damages were awarded in favor-

of the plaintiff in the absence of evidence to show how said damages accrued.

Wherefore, the appealed decision is hereby reversed and the complaint dismissed, without pronouncement as to costs.

Pablo, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and *Reyes, J. B. L., JJ.*, concur.

Montemayor, J., reserves his vote.

BENGZON, *J.*, concurring:

The idea occurs to me that the five-year period under section 119, Commonwealth Act No. 141 did not begin to run until *after expiration* of the conventional 5–year period of redemption. I should like to mull it over. Nevertheless I concur in this opinion, now because anyway the plaintiff allowed more than ten years to elapse before exercising his rights (Sept. 1940 to May 1951).

Judgment reversed.

[No. L–6746. August 31, 1954]

ESPERANZA V. BUHAT, ET AL., plaintiffs and appellants, *vs.* ROSARIO BESANA, ETC., ET AL., defendants and appellees.

ACTIONS; PRESCRIPTION; MORTGAGE; REGISTRATION OF MORTGAGE DOES NOT MAKE IT IMPRESCRIPTIBLE.—The fact that a mortgage is registered does not make the action to forclose it imprescriptible.

APPEAL from an order of the Court of First Instance of Capiz. Hernandez, J.

The facts are stated in the opinion of the court.

Vicente Abalajon for plaintiffs and appellants.
Santiago Abella Vito for defendants and appellees.

PARÁS, *C. J.*:

On May 31, 1924, Jose M. Besana mortgaged his undivided one-half share in lot No. 1406 of the cadastral survey of Panay in favor of Luis Bernales, to secure an indebtedness of ₱900, payable within six years from said date. On October 27, 1926, original certificate of title No. RO–1364 (10255) was issued in the name of Jose M. Besana and Rosario Besana, brother and sister, covering lot No. 1406 in undivided equal shares; and on said certificate the mortgage in favor of Luis Bernales was noted. Jose M. Besana died and his portion passed to his surviving sister, Rosario Besana. Luis Bernales also died and his mortgage credit against Jose M. Besana was inherited by Antonio Bernales who in turn transferred the same to the herein plaintiffs, Esperanza V. Buhat and Mauro A. Buhat. Rosario Besana sold her portion to Manuel B. Bernales who,

on June 30, 1950, conveyed it to the plaintiffs. As the indebtedness above referred to remained unpaid, the present action was instituted in the Court of First Instance of Capiz by the plaintiffs against Rosario Besana and her husband Lorenzo Contreras on December 6, 1952, for the foreclosure of the mortgage of May 31, 1924. The defendants Rosario Besana and Lorenzo Contreras filed a motion to dismiss the complaint, on the ground that plaintiffs' cause of action had prescribed, the complaint having been filed more than ten years from May 31, 1930 (in fact some 22 years after the obligation had become due and demandable). On May 6, 1953, the Court of First Instance of Capiz issued an order dismissing the case without costs. The plaintiffs have appealed.

Appellants' contention is that, as the mortgage was registered, the action to foreclose did not prescribe, because section 46 of the Land Registration Act, No. 496, provides that "No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession." This is clearly without merit. The citation speaks of the title of the "registered owner" and refers to prescription or adverse possession as a mode of acquiring ownership, the whole philosophy of the law being merely to make a Torrens title indefeasible and, without more, surely not to cause a registered lien or encumbrance such as a mortgage—and the right of action to enforce it—imprescriptible as against the registered owner. The important effect of the registration of a mortgage is obviously to bind third parties.

Wherefore, the appealed order is affirmed, and it is so ordered with costs against the appellants.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and *Reyes, J. B. L., JJ.*, concur.

Order affirmed.

[No. L-6770. August 31, 1954]

HONORABLE MARCIANO ROQUE, ETC., petitioners, *vs.* PABLO DELGADO, ET AL., respondents.

1. INJUNCTIONS; APPEALS; DISCRETION OF TRIAL COURT TO RESTORE WRIT PENDING APPEAL OR IN ANTICIPATION OF APPEAL.—Under section 4, Rule 39 of the Rules of Court, when an appeal is taken from a judgment granting, dissolving or denying an injunction, the trial court, in its discretion, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal. Although this provision speaks of an appeal being taken and of the pendency of the appeal, the court may restore the injunction before an appeal has actually been taken. As a matter of fact there is authority to the effect that the trial court may restore a preliminary injunction in anticipation of an appeal.

2. ACTIONS; PARTIES; SEPARATION OF PARTY WHO IS A GOVERNMENT OFFICER; DISMISSAL IF NO SUBSTITUTION IS MADE.—Another reason why the present petition was dismissed, is that although the petitioner had ceased to hold the office in virtue of which he instituted the petition, no substitution was made in accordance with section 18 of Rule 3 of the Rules of Court.

ORIGINAL ACTION in the Supreme Court. Certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Pacifico P. de Castro* for petitioner.

Amador E. Gomez for respondents.

PARÁS, *C. J.:*

On September 6, 1952, the Acting Executive Secretary issued an order for the closure of a cockpit known as "Bagong Sabungan" located in barrio Calios, municipality of Sta. Cruz, Province of Laguna, being only some 500 meters from the Seventh Day Adventist Church, in violation of Executive Order No. 318, series of 1941. On November 21, 1952, Pablo Delgado, Eugenio Zamora and Pio Manalo filed in the Court of First Instance of Laguna a petition for certiorari and prohibition, Civil Case No. 9616, against Hon. Marciano Roque as Acting Executive Secretary, Hon. M. Chipeco as Provincial Governor of Laguna, and Patricio Rebeque as Municipal Secretary of Sta. Cruz, Laguna, praying for the issuance of a writ of preliminary injunction restraining said respondents from carrying out the order of closure above mentioned. On November 22, 1952, Judge Nicasio Yatco issued the corresponding writ. On Mach 6, 1953, a decision was rendered in Civil Case No. 9616, dismissing the petition for certiorari and prohibition and dissolving the writ of preliminary injunction. On April 23, 1953, the petitioners in Civil Case No. 9616 filed a motion, praying that under the provision of Rule 39, section 4, of the Rules of Court, the writ of preliminary injunction issued on November 22, 1952, be restored, and on June 1, 1953, Judge Yatco granted the motion in the following order:

"Acting upon the motion filed by Atty. Amador Gomez under date of April 23, 1953 and after hearing both counsel Atty. Gomez and Assistant Provincial Fiscal Mr. Nestor Alampay on the matter, and the consideration of the facts and the circumstances surrounding the case, the Court, in consideration of Rule 39, section 4, of the Rules of Court, makes use of its discretion in ordering the suspension of the dissolution of the injunction during the pendency of the appeal of the judgment rendered by this Court in its decision of March 6, 1953, by thereby reinstating the writ of preliminary injunction pending appeal. The Court further took into consideration the importance of the case and the tense situation of the contending parties, at this stage of the proceedings. The Executive Secretary and all other authorities concerned are hereby instructed

to abide by this order, made effective upon receipt hereof, for the maintenance of the status quo."

The first Assistant Solicitor General, in representation of the Acting Executive Secretary, filed an urgent motion for reconsideration dated June 3, 1953, which was denied by Judge Yatco on June 11, 1953. On June 26, 1953, Hon. Marciano Roque, Acting Executive Secretary, through the First Assistant Solicitor General, instituted in this Court the present petition for certiorari with preliminary injunction against Pablo Delgado, Eugenio Zamora, Pio Manalo and Judge Nicasio Yatco of the Court of First Instance of Laguna, for the annulment of the order of June 1, 1953, issued in Civil Case No. 9616.

It is contended for the petitioner that the respondent Judge acted with grave abuse of discretion or in excess or lack of jurisdiction, because when the order restoring the writ of preliminary injunction was issued, there was no pending appeal. It appears, however, that in the petition dated April 23, 1953, filed in Civil Case No. 9616, it was expressly alleged that, in their projected appeal, the petitioners therein would in effect assail the correctness of the decision in said case. Section 4 of Rule 39 provides that "the trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party." Although this provision speaks of an appeal being taken and of the pendency of the appeal, we cannot see any difference, for all practical purposes, between the period when appeal has been taken and the period during which an appeal may be perfected, since in both cases the judgment is not final. As a matter of fact there is authority to the effect that the trial court may restore a preliminary injunction in anticipation of an appeal. (Louisville & N. R. Co. et al. *vs.* United States et al., 227 Fed. 273.)

It is also argued for the petitioner that at the time the order of June 1, 1953, was issued by the respondent Judge, the act sought to be enjoined had already been performed, the cockpit in question having been actually closed on May 24 and 31, 1953. In answer to this argument, it may be recalled that as early as April 23, 1953, the petitioners in Civil Case No. 9616 filed a petition to suspend the decision of March 9, 1953 and to restore the preliminary injunction previously issued, which petition was not resolved until June 1, 1953, with the result that, if there was any closure, it should be deemed to be without prejudice to the action the responsent Judge would take on said petition dated April 23.

Another contention of the petitioner is that the respondent Judge was inconsistent in holding in his decision of March 6, 1953, that the location of the cockpit is in open violation of Executive Order No. 318, and is subsequently restoring the writ of preliminary injunction that would allow the continued operation of said cockpit. It is significant that, under section 4 of Rule 39, the respondent Judge is vested with the discretion to restore the preliminary injunction; and when we consider that the order of June 1, 1953, took into account "the facts and the circumstances surrounding the case," as well as "the importance of the case and the tense situation of the contending parties, at this stage of the proceedings," in addition to the fact that in his order of June 11, 1953, denying the motion for reconsideration filed by the First Assistant Solicitor General on June 3, the respondent Judge expressly stated that he acted "on the basis of the new facts and circumstances registered on record on the date of the hearing" of the petition of April 23 filed by the petitioners in Civil Case No. 9616, we are not prepared to hold that the respondent Judge had acted with grave abuse of discretion. The allegation in the herein petition that the petitioner was not notified of the hearing of the petition of April 23, is now of no moment, since the petitioner, through counsel, had filed a motion for the reconsideration of the order of June 1, 1953.

Another reason, though technical, why the present petition should be dismissed, is that although the petitioner, Hon. Marciano Roque, had ceased to hold the office in virtue of which he instituted the petition, no substitution has been made in accordance with section 18, rule 3, of the Rules of Court.

Wherefore, the petition is hereby denied, and it is so ordered without cost.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and *Reyes, J. B. L., JJ.*, concur.

Petition denied.

[No. L-6888. August 31, 1954]

NATIONAL ORGANIZATION OF LABORERS AND EMPLOYEES (NOLE), petitioners, *vs.* ARSENIO ROLDAN, MODESTO CASTILLO, and JUAN LANTING, Judges of the Court of Industrial Relations; RIZAL CEMENT CO., INC., respondents.

EMPLOYER AND EMPLOYEE; DISMISSAL FROM EMPLOYMENT AFTER EMPLOYEE HAD BEEN ACQUITTED IN CRIMINAL CASE.—The acquittal ofan employee in a criminal case is no bar to the Court of Industrial Relations, after proper hearing, making its own findings, including the finding that the same employee

was guilty of acts inimical to the interests of his employer and justifying loss of confidence in him by said employer, thereby warranting his dismissal or the refusal of the company to reinstate him.

PETITION to review on certiorari an order of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Enage, Beltran and *Ramon T. Garcia* for petitioner.
Bausa & Ampil for respondent Rizal Cement Co., Inc.,

MONTEMAYOR, *J.:*

This is a petition to review on certiorari the order of the Court of Industrial Relations (CIR) dated January 5, 1953, signed by an associate Judge thereof, and the resolution of March 30, 1953, signed by the majority of the Judges thereof, denying the motion for reconsideration. The facts in the case are not disputed and only questions of law as we understand the petition are involved in this appeal.

Prior to March 12, 1952, the Rizal Cement Co., Inc., a corporation, had a factory and a compound in Binañgonan, Rizal, where cement was being manufactured. Over 200 employees were working in said factory. Most, if not all of them belonged to the National Organization of Laborers & Employees (NOLE), a labor union of which Tarcilo Rivas was the President and Alberto Tolentino a member. On March 12, 1952, because of the supposed failure of the cement company to grant certain demands of the laborers, such as increase in salaries, vacation leave and accrued leave with pay, a strike was declared. The strikers numbering about 200, working in three shifts of about seventy men, maintained a picket line near and around the compound of the cement company and for their convenience a big tent was put up with cots in it where the strikers and their leaders could rest or sleep between shifts.

The following day the cement company filed a petition with the CIR praying that the strikers be ordered to go back to their work, and that the strike be declared illegal. At the suggestion of the CIR, an amended petition docketed as Case 676–V(3) was filed on March 15th by including as party-respondent the NOLE, and the case was set for hearing on March 18th. On that date a temporary settlement was arrived at between the cement company and the strikers to the effect that the former granted to the laborers a 7 per cent general increase in their salaries or wages and fifteen days sick and fifteen days vacation leave with pay, and shortly before March 20th all the strikers returned to work and with the exception of Rivas and Tolentino were admitted by the cement company. The reason for the non-admission of Rivas and Tolentino was that they had in

the meantime been charged with illegal possession of hand grenades found under one of the cots inside the tent of the strikers, in a criminal case before the Court of First Instance of Rizal.

In July 1952, Rivas and Tolentino were acquitted by the Rizal Court of the charge of illegal possession of hand grenades, and armed with this judgment of acquittal, the two men through their union NOLE, filed an urgent motion in the CIR docketed as Case 676–V(5), praying for their reinstatement with the cement company, with backpay. The cement company opposed the motion. The two cases 676–V(3) and 676–V(5) were heard jointly by the CIR, after which it rendered a single order, that of January 5, 1953, now sought to be reviewed.

Despite the judgment of acquittal of Rivas and Tolentino on the ground that their guilt had not been established to the satisfaction of the trial court, or in other words, that their guilt had not been proven beyond reasonable doubt, the CIR made its own finding as to the relation or connection of Rivas and Tolentino with the three hand grenades in question, resulting in the CIR being convinced that those three hand grenades were illegally possessed and intended to be used by Rivas and Tolentino to blast the blasting cap and dynamite storage or magazine of the cement factory within the compound, in relation with the strike. Instead of making a resume of the findings of fact of the CIR and because by law and by established jurisprudence we may not disturb or modify said findings except where there is complete absence of evidence to support the same, we are reproducing that part of the order appealed from containing said findings, including the dispositive part thereof:

"On March 12, 1952, a strike was declared by the workers of petitioner in its factory at Binañgonan, Rizal; that due to said strike, the Armed Forces of the Philippines sent a group of soldiers to maintain peace and order therein. Among these soldiers are Sgt. Angel Huab of the Army and Sgt. Edilberto Buluran of the Constabulary. On March 16, 1952, at about 6:00 o'clock in the morning, Sgt. Huab saw Alberto Tolentino inside the tent occupied by the strikers, picking up three hand grenades and putting them inside a paper bag. Sgt. Huab got scared when he saw Tolentino walk out of the tent with the hand grenades. At this instant, Sgt. Huab ordered a policeman of the petitioner to overtake and stop Tolentino which was done. Thereupon, Sgt. Huab questioned Tolentino who readily admitted that he was carrying said hand grenades which were in a paper bag because he was ordered by Tarcilo Rivas to blast the dynamite storage of the Rizal Cement Factory. Sgt. Huab, being a member of the Army, without authority to investigate the case or cases of this nature, brought Tolentino inside the compound of petitioner and there surrendered him with the hand grenades to Sgt. Edilberto Bularan of the PC. On the strength of the statement of Tolentino implicating Tarcilo Rivas in connection with the hand grenades, Sgt. Buluran brought the two (Tolentino and Rivas) to the PC Headquarters in Pasig, Rizal, for further investigation.

"At the PC Headquarters of Rizal, Rivas and Tolentino were investigated by Sgt. Buluran, Lt. Del Rosario and Lt. Ver. Antonio Antiporda, admittedly the adviser or liaison man of the union to which Rivas and Tolentino belong, i.e., the Federation of Free Workers (FFW), was also investigated by the PC officers on March 16, 1952. The three of them, Antiporda, Rivas and Tolentino, then gave separate written statements to the PC investigating officers which on March 17, 1952, were sworn to by each of them in the presence of each other and in the presence of the attesting witnesses before Nicanor P. Nicolas, Provincial Fiscal of Rizal, at the latter's office at Pasig, Rizal, Exhibits "AA–V(3)", "CC–V(3)", and "FF–V(3)", respectively. The statement of Antonio Antipoda is not disputed. Neither is there any dispute as regards the correctness and veracity of the written confession of Tarcilo Rivas who admitted to the Court that he signed the same voluntarily.

"Respondent NOLE, however, endeavored to show that Exhibit "FF–V(3)", which is the statement of Alberto Tolentino, was signed by him under duress. Tolentino stated during the hearing that he signed said document because Sgt. Buluran was swinging up and down his revolver. Tolentino admitted, however, that Sgt. Buluran did not say or hint that he would hurt him (Tolentino) if he did not sign said statement. Tolentino's demeanor on the witness stand, coupled with the uncontradicted evidence that he swore to and signed his written statement before the Provincial Fiscal after the latter read to him said statement in the presence not only of Antiporda but also of Tarcilo Rivas, Lt. Ver and the attesting witnesses, shows that his (Tolentino's) statement was given voluntarily. The written statement of Antiporda, who was not presented even if only to explain or deny the same, supports also this finding of the Court. Besides, there is no reason, and no motive was shown, why Sgt. Buluran of the PC should threaten Tolentino to sign said statement.

"Tolentino admitted in his written statement, Exhibit "FF–V(3)" that when he was arrested on the morning of March 16, 1952, he was on his way to execute the order given to him by Tarcilo Rivas, President of NOLE, to blast the dynamite storage of the petitioner company. But when Tolentino took the witness stand, he stated that he was on his way to throw said hand grenades into the sea in obedience to the order of Tarcilo Rivas. The Court is at a loss to comprehend this excuse of Tolentino. It was not explained why, instead of passing along the trail leading to the sea, Tolentino followed a path that brought him right into the edge of the compound where he was stopped in the direction of the dynamite and blasting cap storage of the petitioner's factory. Why did he not inform the police, the Philippine Constabulary or the Army who were there for security purposes, particularly Sgt. Huab of the Army, who was only 5 to 15 meters away from where he picked up the hand grenades? Furthermore, this testimony of Tolentino that he was ordered by Rivas to throw the hand grenades into the sea runs counter to the written statement of Tarcilo Rivas (Exhibit "AA–V(3)").

"Tarcilo Rivas also endeavored to extricate himself from his written statement, Exhibit "AA–V(3)". Rivas categorically stated that he ordered Tolentino to surrender the hand grenades to the Philippine Constabulary. This cannot be true because Tolentino was apprehended 300 meters away from the tent and, according to Rivas himself, eight or nine soldiers were around the place besides Sgt. Huab who was only 5 to 15 meters away from the tent. But Rivas claims that perhaps Tolentino did not hear his directive, Exhibit "AA–V(3)". The Court cannot accept this claim of Rivas, because if this were true, Rivas could have easily told the Army and PC soldiers about the hand grenades inside the tent if he was afraid

to pick them up instead of ordering Tolentino to pick and surrender them to the PC. Again, Rivas should have called Tolentino back when the former saw Tolentino walked towards the dynamite storage of petitioner and away from the soldiers, if his instructions were really to surrender the hand grenades to the soldiers. What Rivas and Tolentino failed to do are the most natural things that anyone in their place would have done under the circumstances, to be consistent with their pretensions. What is more strange is that, apparently, none of the two hundred striking workers of the petitioner who occupied, used and had control of the tent in shifts of seventy (70), noticed who placed the hand grenades and their existence under a cot inside the tent until the morning of March 16, 1952, when Rivas told Tolentino to pick them up.

"In passing, it may be stated that the hand grenades were brought to the Court and, according to the testimony of Lt. Ver, they are live and unexploded and that they are not of the army type as they show signs of having been burried for some time.

"The reason why Rivas and Tolentino did not report to the PC and/or Army soldiers the existence of the hand grenades inside the tent is obvious. The directive of Rivas, according to the written statement of Tolentino, to blast the dynamite storage, coupled with the fact the he (Tolentino) was apprehended at the edge of the compound in the direction of the dynamite storage with the hand grenades in his possession, show very clearly the plan to blast said dynamite storage of the company in order to compel it to recognize the respondent NOLE.

"Indeed, it was only by acts independent of their own voluntary desistance that they were prevented from consumating their plan to blast and destroy the dynamite and blasting cap storage of the company by means of the hand grenades. This Court and the Supreme Court, in a number of cases, have held that when the purpose of a strike is to cause destruction of property and/or the means employed to uphold and maintain it is unlawful, the strike is illegal.

* * * * * * *

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court believes and so holds, that the strike declared on March 12, 1952, by the workers of the Rizal Cement Company in its factory at Binañgonan, Rizal, is illegal. As a consequence, although the strike was voted for and approved by the workers, only Tarcilo Rivas and Alberto Tolentino, who committed acts inimical to the interest of their employer, should he held responsible for the illegal strike and, therefore, their petition for reinstatement should be, as it is hereby, denied."

The main legal question involved in the present appeal, which we are called upon to deterimne is, whether or not the Rizal Court judgment of acquittal of Rivas and Tolentino of the charge of illegal possession of hand grenades bound the CIR and barred it from holding its own hearing in Case 676–V(5), thereafter making its own findings, including the finding that the two men had illegal possession of said hand grenades because with them they intended, even attempted to blast the dynamite storage of the cement company, their employer, which would have been an act of sabotage, and in finally declaring said two employees ineligible and unworthy of reinstatement in their posts abandoned by them when they went on strike.

In the case of National Labor Union *vs.* Standard Vacuum Oil Co., 40 Off. Gaz., 3503, this Tribunal said that—

> "The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer. If the Court of Industrial Relations finds that there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that the employer has ample reason to dismiss such employee * * *. It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal."

By a parity of reasoning, we hold that the acquittal of an employee in a criminal case is no bar to the CIR, after proper hearing, finding the same employee guilty of acts inimical to the interests of his employer and justifying loss of confidence in him by said employer, thereby warranting his dismissal or the refusal of the company to reinstate him. The reason for this is not difficult to see. The evidence required by law to establish guilt and to warrant conviction in a criminal case, substantially differ from the evidence necessary to establish responsibility or liability in a civil or non-criminal case. The difference is in the amount and weight of evidence and also in degree. In a criminal case, the evidence or proof must be beyond reasonable doubt while in a civil or non-criminal case, it is merely preponderance of evidence. In further support of this principle we may refer to article 29 of the new Civil Code (Republic Act 386) which provides that when the accused in a criminal case is acquitted on the ground of reasonable doubt, a civil action for damages for the same act or omission may be instituted where only a preponderance of evidence is necessary to establish liability. From all this, it is clear that the CIR was justified in denying the petition of Rivas and Tolentino for reinstatement in the cement company because of their illegal possession of hand grenades intended by them for purposes of sabotage in connection with the strike on March 16, 1952.

The second question involved is whether or not the strike declared on March 12, 1952, maintained up to about March 20th when the strikers with the exception of Rivas and Tolentino returned to work and were admitted by the cement company, was legal. The majority of the Justices of this Court are not inclined to pass upon and determine this question for the reason, that among others, it seems to be moot. It will be remembered that as a result of the strike and evidently to induce the strikers to return to work the cement company had granted a general increase of 7 per cent in their wages as well as 15 days vacation leave and 15 days sick leave, with pay, which grants or concessions still obtain and undoubtedly will continue. Moreover, as may be seen from the dispositive part of the order of the CIR of January 5, 1953, although

the CIR declared the strike illegal nevertheless it held Rivas and Tolentino as the only two responsible for the said illegal strike. The inference is that the rest of the strikers now working with the cement company and enjoying the concessions granted them will not be held responsible for the illegal strike, and that said strike cannot in any way affect their present status as laborers or any demands by them either pending or future. With this understanding, we decline to pass upon the legality or illegality of the strike declared on March 12, 1952, against the cement company, regarding the same as immaterial, if not moot.

In view of the foregoing, the order appealed from is hereby affirmed, with costs.

Parás, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, A., Bautista Angelo, Labrador, Concepcion, and *Reyes, J. B. L. JJ.*, concur.

Order affirmed.

[No. L-7089. August 31, 1954]

DOMINGO DE LA CRUZ, plaintiff and appellant, *vs.* NORTHERN THEATRICAL ENTERPRISES INC., ET AL, defendants and appellees.

1. EMPLOYER AND EMPLOYEE; DAMAGES CAUSED TO EMPLOYEE BY A STRANGER CAN NOT BE RECOVERED FROM EMPLOYEES; GIVING LEGAL ASSISTANCE TO EMPLOYEE IS NOT A LEGAL BUT A MORAL OBLIGATION.—A claim of an employee against his employer for damages caused to the former by a stranger or outsider while said employee was in the performance of his duties, presents a novel question which under present legislation can not be decided in favor of the employee. While it is to the interest of the employer to give legal help to, and defend, its employee charged criminally in court, in order to show that he was not guilty of any crime either deliberately or through negligence, because should the employee be finally held criminally liable and he is found to be insolvent, the employer would be subsidiarily liable, such legal assistance might be regarded as a moral obligation but it does not at present count with the sanction of man-made laws. If the employer is not legally obliged to give legal assistance to its employee and provide him with a lawyer, naturally said employee may not recover from his employer the amount he may have paid a lawyer hired by him.

2. ID.; ID.; PARTIES WHO MAY BE HELD RESPONSIBLE FOR DAMAGES.—If despite the absence of any criminal responsibility on the part of the employee he was accused of homicide, the responsibility for the improper accusation may be laid at the door of the heirs of the deceased at whose instance the action was filed by the State through the Fiscal. This responsibility can not be transferred to his employer, who in no way intervened, much less initiated the criminal proceedings and whose only connection or relation to the whole affair was that it employed plaintiff to perform a specific duty or task, which was performed lawfully and without negligence.

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Belmonte, J.

The facts are stated in the opinion of the court.

Conrado Rubio for plaintiff and appellant.

Ruiz, Ruiz, Ruiz, Ruiz, and *Benjamin Guerrero* for defendants and appellees.

MONTEMAYOR, *J.:*

The facts in this case based on an agreed statement of facts are simple. In the year 1941 the Northern Theatrical Enterprises Inc., a domestic corporation operated a movie house in Laoag, Ilocos Norte, and among the persons employed by it was the plaintiff DOMINGO DE LA CRUZ, hired as a special guard whose duties were to guard the main entrance of the cine, to maintain peace and order and to prevent the commission of disorders within the premises. As such guard he carried a revolver. In the afternoon of July 4, 1941, one Benjamin Martin wanted to crash the gate or entrance of the movie house. Infuriated by the refusal of plaintiff De la Cruz to let him in without first providing himself with a ticket, Martin attacked him with a bolo. De la Cruz defended himself as best he could until he was cornered, at which moment to save himself he shot the gate crasher, resulting in the latter's death.

For the killing, De la Cruz was charged with homicide in Criminal Case No. 8449 of the Court of First Instance of Ilocos Norte. After a re-investigation conducted by the Provincial Fiscal the latter filed a motion to dismiss the complaint, which was granted by the court in January 1943. On July 8, 1947, De la Cruz was again accused of the same crime of homicide, in Criminal Case No. 431 of the same Court. After trial, he was finally acquitted of the charge on January 31, 1948. In both criminal cases De la Cruz employed a lawyer to defend him. He demanded from his former employer reimbursement of his expenses but was refused, after which he filed the present action against the movie corporation and the three members of its board of directors, to recover not only the amounts he had paid his lawyer but also moral damages said to have been suffered, due to his worry, his neglect of his interests and his family as well as the supervision of the cultivation of his land, a total of ₱15,000. On the basis of the complaint and the answer filed by defendants wherein they asked for the dismissal of the complaint, as well as the agreed statement of facts, the Court of First Instance of Ilocos Norte after rejecting the theory of the plaintiff that he was an agent of the defendants and that as such agent he was entitled to reimbursement of the expenses incurred by him in connection with the agency (Arts. 1709–1729 of the old Civil Code), found that plaintiff had no cause of

action and dismissed the complaint without costs. De la Cruz appealed directly to this Tribunal for the reason that only questions of law are involved in the appeal.

We agree with the trial court that the relationship between the movie corporation and the plaintiff was not that of principal and agent because the principle of representation was in no way involved. Plaintiff was not employed to represent the defendant corporation in its dealings with third parties. He was a mere employee hired to perform a certain specific duty or task, that of acting as special guard and staying at the main entrance of the movie house to stop gate crashers and to maintain peace and order within the premises. The question posed by this appeal is whether an employee or servant who in line of duty and while in the performance of the task assigned to him, performs an act which eventually results in his incurring in expenses, caused not directly by his master or employer or his fellow servants or by reason of his performance of his duty, but rather by a third party or stranger not in the employ of his employer, may recover said damages against his employer.

The learned trial court in the last pargaraph of its decision dismissing the complaint said that "after studying many laws or provisions of law to find out what law is applicable to the facts submitted and admitted by the parties, has found none and it has no other alternative than to dismiss the complaint." The trial court is right. We confess that we are not aware of any law or judicial authority that is directly applicable to the present case, and realizing the importance and far-reaching effect of a ruling on the subject-matter we have searched, though vainly, for judicial authorities and enlightenment. All the laws and principles of law we have found, as regards master and servant, or employer and employee, refer to cases of physical injuries, light or serious, resulting in loss of a member of the body or of any one of the senses, or permanent physical disability or even death, suffered in line of duty and in the course of the performance of the duties assigned to the servant or employee, and these cases are mainly governed by the Employers' Liability Act and the Workmen's Compensation Act. But a case involving damages caused to an employee by a stranger or outsider while said employee was in the performance of his duties, presents a novel question which under present legislation we are neither able nor prepared to decide in favor of the employee.

In a case like the present or a similar case of, say a driver employed by a transportation company, who while in the course of employment runs over and inflicts physical injuries on or causes the death of a pedestrian, and such

driver is later charged criminally in court, one can imagine that it would be to the interest of the employer to give legal help to and defend its employee in order to show that the latter was not guilty of any crime either deliberately or through negligence, because should the employee be finally held criminally liable and he is found to be insolvent, the employer would be subsidiarily liable. That is why, we repeat, it is to the interest of the employer to render legal assistance to its employee. But we are not prepared to say and to hold that the giving of said legal assistance to its employees is a legal obligation. While it might yet and possibly be regarded as a moral obligation, it does not at present count with the sanction of man-made laws.

If the employer is not legally obliged to give, legal assistance to its employee and provide him with a lawyer, naturally said employee may not recover the amount he may have paid a lawyer hired by him.

Viewed from another angle it may be said that the damage suffered by the plaintiff by reason of the expenses incurred by him in remunerating his lawyer, is not caused by his act of shooting to death the gate crasher but rather by the filing of the charge of homicide which made it necessary for him to defend himself with the aid of counsel. Had no criminal charge been filed against him, there would have been no expenses incurred or damage suffered. So, the damge suffered by plaintiff was caused rather by the improper filing of the criminal charge, possibly at the instance of the heirs of the deceased gate crasher and by the State through the Fiscal. We say improper filing, judging by the results of the court proceedings, namely, acquittal. In other words, the plaintiff was innocent and blameless. If despite his innocence and despite the absence of any criminal responsibility on his part he was accused of homicide, then the responsibility for the improper accusation may be laid at the door of the heirs of the deceased and the State, and so theoretically, they are the parties that may be held responsible civilly for damages and if this is so, we fail to see how this responsibility can be transferred to the employer who in no way intervened, much less initiated the criminal proceedings and whose only connection or ralation to the whole affair was that he employed plaintiff to perform a specific duty or task, which task or duty was performed lawfully and without negligence.

Still another point of view is that the damages incurred here consisting of the payment of the lawyer's fee did not flow directly from the performance of his duties but only indirectly because there was an efficient, intervening cause, namely, the filing of the criminal charges. In other words, the shooting to death of the deceased by the plaintiff was not the proximate cause of the damages suffered but may

be regarded as only a remote cause, because from the shooting to the damages suffered there was not that natural and continuous sequence required to fix civil responsibility.

In view of the foregoing, the judgment of the lower court is affirmed. No costs.

Bengzon, Padilla, Reyes, Bautista Angelo, Labrador, Concepcion, and *Reyes, J. B. L., JJ.,* concur.

Parás, C. J. reserves his vote.

Judgment affirmed.

[No. L-4301. 29 July 1954]

MÁXIMO OMANDAM, applicant and appellee, *vs.* THE DIRECTOR OF LANDS, oppositor and appellant

1. LAND REGISTRATION; OPPOSITION; FAILURE TO FILE OPPOSITION WITHIN THE PERIOD GRANTED OR WITHIN REASONABLE TIME THEREAFTER IS ABANDONMENT.—Although the Director of Lands, as oppositor to an application for registration, was not declared in default because his representative appeared on the date and time set for the hearing and was granted fifteen days within which to file his opposition, yet the fact that he did not file it within the period granted or within a reasonable time thereafter constituted abandonment of his opposition, the reservation to the effect that the non-presentation of an opposition was "without prejudice to the right of this Bureau to take proper steps should it find upon proper investigation that the applicant is not entitled to the land sought to be registered," notwithstanding.
2. PLEADING AND PRACTICE; MOTION FOR RELIEF, WHEN SUFFICIENT IN FORM AND SUBSTANCE.—A motion for relief, although verified by the movant, yet if, apart from failing to show excusable neglect, it was not accompanied by an affidavit of merits, is not sufficient in form and substance to justify the Court to require those against whom it is filed to answer within fifteen days from the receipt thereof, as provided for in section 4, Rule 38 of the Rules of Court.

APPEAL from an order of the Court of First Instance of Misamis Occidental. Ceniza, J.

The facts are stated in the opinion of the court.

First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitors Pacifico P. de Castro* and *Mariano M. Trinidad* for the appellant, Director of Lands.

Alfonso L. Penaco for the applicant and appellee.

PADILLA, *J.:*

Máximo Omandam applied for registration, under the Land Registration Act, of a parcel of agricultural land, together with the improvements thereon, containing an area of 177,813 square meters or 17.7813 hectares, located in the barrio of Casul, municipality of Baliañgao, Province of Occidental Misamis, delimited and described in the plan and technical description attached to the application, subject to

a mortgage in favor of the Philippine National Bank for the sum of ₱600. Notice of hearing was issued on 1 September 1949, duly published and served upon all interested parties setting the hearing of the application for 28 December 1949 at 8:00 a.m. On that day the representatives of the Bureau of Lands and of the Philippine National Bank and other opponents appeared. The representatives of the Bureau of Lands and of the Philippine National Bank were granted fifteen days within which to file a written opposition to the application. Except as to those who had made their appearance a general default was entered. On 2 May 1950 after hearing the Court rendered judgment for the applicant decreeing the registration of the parcel of land in his name, subject to a mortgage to secure the payment to the Philippine National Bank of ₱600. The opponents Pedro Omandam and Evencia Omandam who appeared and cross-examined the witnesses withdrew their opposition to the application. On 6 June 1950 an opposition was filed by the Director of Lands and ten days later (16 June), a motion for reconsideration was filed by him predicated upon newly discovered evidence and lack of notice of the hearing held on 2 May 1950. This was denied by the Court in its order of 8 July 1950. On 15 August, the provincial fiscal in behalf of the Director of Lands filed a motion for relief from judgment on the ground of executable neglect. He alleged that the faulty means of communication from Occidental Misamis to Manila was the cause of the Government's failure to file its opposition to the application. This was denied by the Court on 9 September 1950, from which order denying the relief prayed for the Director of Lands is appealing.

Appellant points to the lack of hearing on the petition for relief, as provided for in sections 4 and 6, Rule 38. According to the rule the Court is to require "those against whom the petition is filed to answer the same within fifteen days from the receipt thereof" "if the petition is sufficient in form and substance to justify such process." Granting that the means of communication between Occidental Misamis and Manila was faulty as alleged by the appellant, still there is no justification for the delay in filing his opposition to the application. It was filed on 6 June 1950. And although he was not in default because his representative appeared on the date and time set for the hearing and was granted fifteen days within which to file his opposition to the application, yet the fact that he did not file it within the period granted or within a reasonable time thereafter led the Court to believe that he abandoned his opposition to the application. More, as early as 5 June 1949 the Solicitor General returned the record of the case to the Court with the statement that the Director of Lands did not deem

it necessary to file an opposition to the registration applied for by Máximo Omandam. This statement must have been made upon report on investigation done by the field officers of the Bureau of Lands. The reservation made by the Director of Lands in the indorsement to the Solicitor General that the non-presentation of an opposition was "without prejudice to the right of this Bureau to take proper steps should it find upon proper investigation that the applicant is not entitled to the land sought to be registered" does not justify the delay of the appellant in filing his opposition. The motion for relief, apart from failing to show excusable neglect, does not have an affidavit of merits, for although it is verified by the provincial fiscal and the affidavit attached thereto sworn to also by the provincial fiscal, the latter does not know the facts upon which the opposition is based, to wit: that the applicant has not been in possession of the parcel of land applied for since 26 July 1894. Hence, being an insufficient petition not only in form but also in substance to justify the Court to require those against whom it is filed to answer within fifteen days from the receipt thereof, as provided for in section 4, Rule 38, the hearing provided for in section 6 of the rule was not available to the party seeking the relief.

The order appealed from is affirmed, without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo Bautista Angelo, Labrador, Concepción, and *J.B.L. Reyes, JJ.,* concur.

Order affirmed.

[No. L-6445. 29 July 1954]

TOMÁS BAGALAY, plaintiff and appellant, *vs.* GENARO URSAL, defendant and appellee

DAMAGES; CLAIM FOR DAMAGES UNDER ARTICLE 27 OF THE CIVIL CODE; PARTY ENTITLED TO DAMAGES ONLY WHEN PUBLIC SERVANT REFUSES OR NEGLECTS TO PERFORM HIS OFFICIAL DUTY WITHOUT CAUSE.—Article 27 of the Civil Code which authorizes the filing of an action for damages contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. In the case at bar, plaintiff is not entitled to moral damages because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it.

APPEAL from an order of the Court of First Instance of Cebu. Piccio, J.

The facts are stated in the opinion of the court.

Numeriano G. Estenzo for plaintiff and appellant.

City Fiscal José L. Abad & First Assistant City Fiscal Honorato Garciano for defendant and appellee.

PADILLA, *J.*:

An action was brought to recover moral damages in the sum of ₱10,000 and ₱2,500 for attorney's fees and costs. For cause of action the plaintiff alleges that the defendant, in his capacity as City Assessor of Cebu, wrote and mailed to him a letter by which he was informed that he was delinquent in the payment of realty tax from 1947 to 1951 on a parcel of land assessed at ₱1,800, amounting to ₱98.45 including penalties, and that unless the same be paid on 9 May 1952 the real property would be advertised for sale to satisfy the tax and penalty due and expenses of the auction sale; that the letter caused him mental anguish, fright, serious anxiety, moral shock and social humiliation; besmirched his reputation; wounded his feelings, all of which the plaintiff fairly estimates to be ₱10,000. A motion to dismiss the complaint on the ground that it does not state a cause of action was granted. A motion for reconsideration of the order of dismissal was denied. Hence this appeal.

Laying aside the other unimportant point as to whether the letter was addressed to Tomas Bacalay and not to the plaintiff surnamed Bagalay and granting that it was addressed and mailed to the latter, still the facts pleaded in the complaint, admitting them to be true, do not entitle him to recover the amount of moral damages he claims to have suffered as a result of the writing and mailing of the letter by the defendant in his official capacity and receipt thereof by the plaintiff because the former has done nothing more than to write and mail the letter. There is no allegation in the complaint that the amount due for the realty tax and penalty referred to in the defendant's letter complained of had been paid by the plaintiff. Article 27 of the Civil Code which authorizes the filing of an action for damages, relied upon by the plaintiff, contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. The provisions of the article invoked by the plaintiff do not lend support to his claim and contention, because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it. All the moral damages the plaintiff claims he has suffered are but the product of oversensitiveness.

The order appealed from is affirmed, with costs against the plaintiff.

Parás, C. J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *J. B. L. Reyes, JJ.*, concur.

Order affirmed.

[No. L-5577. July 31, 1954]

H. E. HEACOCK CO., petitioner and appelant, *vs.* NATIONAL LABOR UNION ET AL., respondents and appellees

1. EMPLOYER AND EMPLOYEES; FINDINGS OF FACT OF COURT OF INDUSTRIAL RELATIONS, CONCLUSIVE IN APPEAL BY CERTIORARI.—The findings of fact of the Court of Industrial Relations in an appeal by certiorari are conclusive on the Supreme Court.
2. ID.; BONUS; PAYMENT ON EQUITABLE CONSIDERATION.—For the year 1947 the petitioner paid a bonus of one month salary to all its employees, and for the years 1948 and 1949, realizing necessary profits, it also paid a bonus to its executives and heads of departments, omitting only the low salaried employees. *Held:* Even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations.
3. ID.; ID.; ITS CONSIDERATION.—Any extra concession granted by the employer to his employee or laborer is necessarily premised on the need of improving the latter's working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer.

PETITION FOR REVIEW of a decision of the Court of Industrial Relation. Certiorari.

The facts are stated in the opinion of the court.

Perkins, Ponce Enrile & Contreras for the petitioner.
H. A. Ferrer for the respondent court.
Eulogio R. Lerum for the respondent Union.

PARÁS, *C. J.:*

The National Labor Union, hereinafter to be referred to as the Union, filed a petition under date of June 26, 1950 in the Court of Industrial Relations against H. E. Heacock Co., hereinafter to be referred to as the Company, praying that the latter be ordered to pay to all its low salaried employees their bonus for the years 1948 and 1949, in an amount equivalent to one month salary for each year, it being alleged in substance that on the occasion of the distribution on April 17, 1948 of the same bonus for the year 1947, the Company promised that said benefit would be granted yearly to the employees, provided sufficient profits were made; that in 1948 and 1949 the Company, notwithstanding available profits, distributed bonus only to its high salaried employees; that upon the Company's failure to accede to the Union's demand for the payment of the stipulated bonus for the years 1948 and 1949, and upon its refusal to submit the matter to the labor-management committee in accordance with the collective bargaining agreement of April 1949, the employees declared a strike on June 19, 1950.

In its answer, the Company in substance alleged that it had never bound itself to pay an annual bonus and that granted for the year 1947 was purely an act of grace

and liberality on the part of the Company; that while the Company made some profits and paid to its executive and chiefs of departments bonuses for the years 1948 and 1949, the same was a voluntary concession of said officials who had received no increases in pay and were not entitled to and did not actually collect compensation for overtime work; that the compensation of the employees was never made to depend wholly or in part upon profits, and all wages to which they are entitled were set out in the agreement of July 11, 1949, and any other payment or gratuity was entirely within the Company's discretion; that the illegal strike staged by the Union led the Company to suffer damages in the sum of ₱12,000.00.

After hearing, the Court of Industrial Relations, through Judge Jose S. Bautista, rendered a decision in favor of the employees, ordering the Company to pay them one month salary as bonus for the year 1948 and another one month salary for the year 1949. A subsequent motion for reconsideration filed by the Company was denied by the resolution of the Court of Industrial Relations *in banc,* dated July 16, 1951, by a vote of three to two. The instant petition for certiorari was filed by the Company, assailing the decision of the Court of Industrial Relations.

The lower court found that on April 17, 1948, the Company distributed to all its employees a bonus equivalent to their salaries for one month for the year 1947; that the Company realized profits in 1948 and 1949, and although it paid bonus to its high officials and executives for said years, it did not extend the same privilege to any low salaried employee; that the Union duly filed with the Company a protest against such omission, and demanded the payment of the same bonus to all the low salaried employees; that in the protest of May 15, 1950, the Union gave notice that, upon failure of the company to grant the demand, steps would be taken for the protection of the members of the Union; that upon denial of the Company and its failure to submit the matter to the labor-management committee, as requested by the Union, the employees staged a peaceful strike on June 19, 1950, although they returned to work in obedience to a directive of the court; that the Company in fact made a promise to all its low salaried employees on April 17, 1948, that a bonus of one month salary would be distributed among them yearly, as for the year 1947, as long as the Company would realize sufficient profits.

The Company, however, contends that it had never assumed the obligation of paying the bonus claimed by the Union, and that there is no evidence whatsoever tending to prove such obligation.

It appears that the issues of The Manila Times and The Manila Chronicle of August 22, 1948 featured a "Heacock Supplement" containing the following statements:

"The steady growth and enviable reputation of the H. E. Heacock Co., as an institution well known in the Philippines and in the entire Far East for its quality merchandise and courteous service exemplify a modern tenet of progressive employer-employee relationship founded on mutual confidence and good-will.

"The Heacock employees are given all the benefits that can reasonably be expected from the management, Jose Y. Orosa, the firm's first vice-president and assistant general manager, declared. 'For this reason,' he added, 'we have never had the unfortunate experience of seeing our employees go on strike since the company was organized in 1905. And we don't expect to have any strikes.'

"That the sound relationship between the management and the employees redounds to the good of everybody concerned was also pointed out by Mr. Orosa. The employer's goodwill is returned with a spontaneous manifestation of loyalty, cooperation, efficiency and unstinted honesty on the part of the employees, it was further explained.

"The present mutual confidence and good-will of Heacock's personnel is maintained for the ultimate benefit of the buying public, Mr. Orosa said. Employes who are treated right have sufficient reasons to give their employers full cooperation so that in the final analysis, the customers are the recipients of the rewards of such cooperation.

"Since the H. E. Heacock Co. resumed business after the war, 87 of its 200 employees have been given salary, increases, Mr. Orosa revealed. There are other meritorious cases which deserve similar consideration in due time, it was pointed out.

"One of the most helpful and progressive steps ever taken by a firm like Heacock's is the setting up of a special fund for which the employees may draw a cash loan equivalent to a half-month salary and payable within 60 days. This privilege, it was explained, is a boon to those employes who may be forced by circumstances beyond their control to meet emergency needs.

"Another benefit extended to Heacock employes is a 25 per cent overtime pay in addition to their regular pay. In other words, the employes are paid 25 per cent for all hours of work beyond the eight-hour limit fixed by law, it was also stressed. This makes it fair and profitable for the employes of this firm to render overtime service whenever the need arises, and that generally is during special sales and the Christmas season.

"At the end of every year, Mr. Orosa declared the Heacock employes enjoy a profit-sharing privilege when they are given bonuses by the management the amount depending on the profits realized during that year. This progressive policy, he pointed out, makes for a genuine interest on the part of the employes to work honestly and sincerely for the good of the company—a company which is theirs in a sense.

"Every year the employes of Heacock's are given 15 days vacation leave and 15 days sick leave with pay. They are also entitled to free medical and dental service rendered by the company physician and dentist.

"The management of the H. E. Heacock Co. firmly believes that athletics fosters fraternity, cooperation and 'a sound mind in a sound body.' With this end in view, the firm formed an athletic association whose membership is open to all employes of the company. Followers of the basketball game in this country are familiar with the reputation of the Heacock quintet which has time and again garnered laurels in the local sporting world.

"Mr. Orosa revealed that the H. E. Heacock Co. is a bona fide member of the Manila Industrial and Commercial Association (MICA). Such membership, he said assures both the management and the employes with a solid foundation for profitable and

sound business relationship. Problems affecting both parties which may arise are met and solved with open minds on common grounds. Fortunately for Heacock's, 40 years of public service have proved that the management and the employes have joined hands in mutual confidence and good-will.

"'Heacock's has a splended reputation,' Mr. Orosa declared, 'and this has been built up by the employes and the management. We have lived up to the expectation of the public. We continue to do so, and to better serve our customers, we are opening our new air-conditioned store this week'"

The same publication was carried in the issue of The Manila Daily Bulletin of August 23, 1948. The Union presented oral evidence tending to show that the President and General Manager of the Company, Donal O. Gunn, was the one who made the promise of April 17, 1948, to pay to all its employees yearly one-month salary as bonus, provided there were profits. This testimony is controverted by Mr. Gunn; but the lower court considered, in addition to such oral evidence, the publication of the "Heacock Supplement" on the occasion of the opening of the new store of the Company in Dasmariñas Street, Manila, as conclusive proof of its commitment to pay the bonus in question.

The "Heacock Supplement", in the portion pertinent to the case at bar, contained the following paragraph: "At the end of every year, Mr. Orosa declared, the Heacock employees enjoy a profit-sharing privilege when they are given bonuses by the management, the amount depending on the profits realized during that year. This progressive policy, he pointed out, makes for a genuine interest on the part of the employees to work honestly and sincerely for the good of the company—a company which is theirs in a sense." These statements are denied by Mr. Orosa, Vice-President and Assistant General Manager of the Company; and attorneys for the latter argue that Guztavo M. Torres, Assistant Manager of the Personnel Service Advertising Bureau which was then handling the advertising account of the Company, prepared the "Heacock Supplement", and, testifying on his interview with Mr. Orosa, declared that he was not certain as to the nature of the bonus talked about, and that he thought that it referred to the Christmas bonus which the Company gives to its employees at the end of every year, and that this was what he had in mind when he wrote the article in question. The Court of Industrial Relations gave no weight to the denial of Mr. Orosa, and observed that the latter was aware, or should have read and known the Supplement in question, and his failure to make any correction or denial of its contents shortly after its publication, negatives the stand now taken by him.

The Company also points out that both Mr. Gunn and Mr. Orosa could not legally bind the Company which can

only act through its board of directors, and there is nothing in the record to show that the board promised to pay any yearly bonus or ratified the alleged promise made by Mr. Gunn or Mr. Orosa. Counsel for the Union, however, observes that notwithstanding the publication of the "Heacock Supplement" which undoubtedly must have been noticed by all the officials of the Company, no correction or denial ever came from its board of directors which, by such silence, must be deemed as having ratified the commitment of Mr. Gunn and the statement of policy featured in the "Heacock Supplement".

The Court of Industrial Relations also invoked, as another circumstance confirming the promise made by Mr. Gunn to pay an annual bonus to all the low salaried employees of the Company, the following passage contained in his letter of February 19, 1949, addressed to the Union: "This company desires to call your attention to the fact that the salaries, bonuses (en plural por referirse al bono de Navidad y al bono por razon de utilidades) paid vacation leaves, paid sick leave, medical and dental services, and other privileges and facilities, accorded to its employees are the highest in the City of Manila for comparable position and, as a consequence, we cannot consider any general increase in wages at the present time without doing violence to the stability of the labor situation here, of which you are fully aware."

Attorneys for the Company have exerted great efforts in disputing the findings of the lower court, but we are not in a position to pass upon, much less alter, said findings which are conclusive in this instance. Even so, the decision favorable to the Union may further be predicated upon the case of Philippine Education Company, Inc. *vs.* Court of Industrial Relation et al., G. R. No. L–5103, December 24, 1952, in which we held that, even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations. It appears herein that for the year 1947 the Company paid a bonus of one-month salary to all its employees, and for the years 1948 and 1949, realizing necessary profits, it also paid a bonus to its executives and heads of departments, omitting only the low salaried employees. The payment of the bonus in 1947 already generated in the minds of all the employees the fixed hope of receiving the same concession in subsequent years, and on the ground of equity they deserved to be paid the bonus for the years 1948 and 1949, when the Company admittedly realized enough profits. The Company insists that its high officials were given bonus for 1948 and 1949 because they had never been granted any salary raise or paid for any overtime work. This is, however, answered by the Union

which alleges that no salary increase or overtime pay was necessary for the high officials of the Company, since they have already been receiving adequate compensation.

The Company also maintains that no valid obligation to pay the bonus in question could arise, because there was no consideration therefor. It is sufficient to state that any extra concession granted by the employer to his employee or laborer is necessarily premised on the need of improving the latter's working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer.

Wherefore, the decision of the Court of Industrial Relations is hereby affirmed, and it is so ordered with costs against the petitioner, H. E. Heacock Co.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

Judgment affirmed.

[No. L-7021. 31 July 1954] [1]

JOSEPH FELDMAN, petitioner, *vs.* Hon. DEMETRIO ENCARNACION, as Judge of the Court of First Instance of Rizal, VICTORIO LACHENAL, ALFONSO LACHENAL and JOSE VILLAFLOR, respondents.

EXECUTION PENDING APPEAL; APPEALS; EFFECT OF PERFECTED APPEAL ON JURISDICTION OF TRIAL COURT; EXCEPTIONS; MATTERS INVOLVED AND LITIGATED IN APPEAL.—In a judgment rendered on the counterclaim by the defendants, the Court of First Instance ordered the plaintiff to vacate and surrender to the defendants the property in question and to pay the rentals up to the date the possession of the entire property shall have been received by them. Plaintiff appealed from this judgment to the Court of Appeals. After the approval of the record on appeal, defendants filed in the Court of First Instance a motion, praying that the plaintiff be ordered to deposit with the clerk of the trial court the accumulated rentals plus interest and the monthly rental until the decision appealed from shall have been finally disposed of by the appellate court. The trial court granted the motion. Plaintiff seeks by certiorari to annul the order of the trial court. Plaintiff contends that upon the approval of the record on appeal, the trial court losses its jurisdiction over the case and, consequently, the order complained of was entered without jurisdiction. On the other hand, defendants claim that despite the appeal, the trial court retains the power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." In support of their pretense, they cite the assignment of errors made by the plaintiff that the lower court erred in holding (1) that the consent of plaintiff to the waiver of his rights over the leased property was voluntary and for good consideration and not under duress; (2) that plaintiff had not exercised the option granted by the original lease; and (3) that plaintiff was a possessor in

[1] Motion for reconsideration was denied on September 3, 1954.

bad faith and the defendants in good faith. *Held*: It would seem that the defendants' theory is that taking into consideration the assignment of errors of the plaintiff, the directive to the latter to deposit with the clerk of court the accumulated unpaid rentals including interest thereon and the future rentals until the appeal is finally decided, does not involve a matter litigated in the appeal of the plaintiff in the original motion. The contention is not well taken, because if the consent of the plaintiff to the waiver was not voluntary and for good consideration but under duress, he might be entitled to exercise the option granted in the lease; because if plaintiff had exercised the option granted, he would be entitled to continue in possession of the leased premises; and because if he was a possessor in good faith, then the judgment of the trial court directing the plaintiff to vacate the premises and to pay the rentals would have to be reversed. The accumulated unpaid rentals and interest thereon and the future rentals of the leased premises are then matters involved and litigated in the appeal. To order the deposit thereof with the clerk of court is virtually, if not actually, an execution of the judgment which the trial court cannot direct but for good reasons to be stated in a special order and to be set forth in the record on appeal.

ORIGINAL ACTION in the Supreme Court. Certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

Juan T. Chuidian and *Jose S. Zafra* for the petitioner.

Sixto de la Costa, Benjamin C. Alonzo and *Protasio Amonoy* for the respondents.

PADILLA, *J.*:

The petition seeks to annul the order of the respondent court entered on 30 June 1953, the dispositive part of which reads as follows:

IN VIEW OF THE FOREGOING, the second motion of the defendants in the opinion of this Court is in order, and the plaintiff is hereby ordered to deposit with the Clerk of Court of this Court the accumulated unpaid rentals including interest thereon in the total amount of ₱119,700 and the corresponding rental on the said property every month from May 1, 1953 until the appeal is finally decided; * * *

for lack of jurisdiction of the respondent court to enter it.

The petitioner and the respondents are agreed that in civil case No. 7799 of the Court of First Instance of Rizal entitled Joseph Feldman, plaintiff; Mercedes H. Vda. de Hidalgo, intervenor, as party-plaintiff; Hon. Herbert Brownell, Jr., Attorney General of the United States in lieu of the Philippine Alien Property Administrator of the United States, intervenor *versus* Ramón L. Corpus, etc., defendants; Victorio Lachenal, Ildefonso Lachenal, and José Villaflor, joinders, as parties-defendant, judgment was rendered on the counterclaim of the defendants, the pertinent dispositive part of which reads as follows:

* * *. On the counterclaim of the defendants, the plaintiffs and his business partners, Henry Pile and George Feldman, are hereby ordered to vacate and to surrender to the defendants the property

formerly known as Varadero de Navotas * * * and to pay the defendants, by way of rentals on the shipyard the amount of ₱1,000.00 a month from and beginning June 1, 1946, up to the date the physical possession of the entire property or shipyard with all its accessories and improvements thereon shall have been actually returned to and duly received by the defendants, the registered owners thereof, with legal interest thereon from the date of the filing of the counterclaim;

that from such judgment a notice of appeal, an appeal bond and a record on appeal were filed on 30 October 1950; that on 10 March 1952 the record on appeal was amended; that on 24 March 1952 the trial court issued an order which reads as follows:

There being no opposition to the amended record on appeal, dated March 10, 1952, filed by counsel for the plaintiff, which is also adopted by the above named intervenor, and finding the same to be correct and in order, the said amended record on appeal is hereby approved.

The Clerk of Court is hereby directed to certify and elevate the same to the Court of Appeals, together with all the exhibits adduced during the trial, oral and documentary, within the period prescribed by the Rules of Court;

that the record on appeal was forwarded to and docketed in the Court of Appeals as CA–G. R. No. 9375–R; that on 3 August 1953 the case was forwarded to this Court by the Court of Appeals; that on 14 May 1953, the respondents Victorio Lachenal, Alfonso Lachenal and José Villaflor, defendants therein, filed in the respondent court a supplemental motion, the prayer of which reads as follows:

1. That the plaintiff (now petitioner) be ordered to deposit with the Clerk of this Court (Court of First Instance of Rizal) the accumulated rentals plus interest in the total amount of ₱119,700 and the monthly rental of ₱1,000.00 every month beginning June 1, 1953, until the decision appealed from shall have been finally considered and disposed of by the appellate court;

2. That the plaintiff and his business partners be ordered and enjoined not to sell, encumber, remove, dismantle, or otherwise dispose of any of the installation, equipments, machineries and motor vehicles listed in the Annex "B" hereto attached, without the consent and approval by this Honorable Court;

that on 30 June 1953 the respondent court granted the motion in an order the dispositive part of which is quoted at the beginning of this opinion; and that a motion for reconsideration of the order just referred to on the ground of lack of jurisdiction of the trial (respondent) court was denied.

It is the contention of the petitioner that upon approval or allowance of the record on appeal the respondent court lost its jurisdiction over the case and, consequently, the order of 30 June 1953 complained of was entered without jurisdiction.

On the other hand, the respondents claim that despite the appeal the respondent court retains the power "to issue orders for the protection and preservation of the rights of

the parties which do not involve any matter litigated by the appeal," pursuant to section 9, Rule 41. In support of their pretense they cite the assignment of errors made by the petitioner, appellant therein, to wit:

1. The lower court erred in holding that the consent of appellant to the waiver of his rights over the *varadero* on May 5, 1943 (Exhibit G–1) was voluntary and for good consideration and not under duress:

2. The lower court erred in holding that the appellant had not exercised the option granted by the original lease, Exhibit "A";

3. The lower court erred in finding that the appellant was a possessor in bad faith, and the appellees in good faith, for purposes of article 361 of the Civil Code. (pp. 10–11 appellant's brief, CA–G.R. No. 9375–R, now SC–G.R. No. L–7195.)

It would seem that the respondents' theory is that taking into consideration the assignment of errors of the petitioner, appellant therein, the directive to the petitioner to deposit with the clerk of court the accumulated unpaid rentals including interest thereon amounting to ₱119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, does not involve a matter litigated in the appeal of the petitioner in the original action. This contention is not well taken, because if the consent of the petitioner, appellant therein, to the waiver was not voluntary and for good consideration but under duress as he contends, he might be entitled to exercise the option granted in the lease; because if the petitioner, appellant therein, had exercised the option granted as he contends, he would be entitled to continue in possession of the leased premises; and because if he was a possessor in good faith, as he contends, then the judgment of the trial court, which unfortunately has not been brought to us by the parties but only the pertinent dispositive part directing the petitioner, appellant therein, to vacate the leased premises and to pay the rentals would have to be reversed. The accumulated unpaid rentals and interest thereon and the future rentals of the leased premises are then matters involved and litigated in the appeal. To order the deposit thereof with the clerk of court is virtually, if not actually, an execution of the judgment which the respondent court cannot direct but for good reasons to be stated in a special order and to be set forth in the record on appeal.[1] The good reasons do not appear. The order complained of is not the one contemplated in the rule just referred to because it was issued not while the case was still within the jurisdiction of the respondent court. If it be true, as contended by the respondents, appellees therein, that the order of the respondent court complained of was just to supplement the writ of execution issued against Mercedes H. Vda. de Hidalgo, intervenor and party-plaintiff therein, who

[1] Section 2, Rule 39.

has not appealed from the judgment rendered against her, then it would be pertinent to ask why the liability under the judgment of the intervenor and party-plaintiff who has not appealed from the judgment rendered against her should be supplemented by making the petitioner, appellant therein, responsible for her obligation or liability under the judgment? Are they severally (*solidariamente*) responsible?

That part of the order which enjoins and prohibits the petitioner, appellant therein, "to sell, encumber, remove, dismantle or otherwise dispose of any of the installation, equipments, machineries and motor vehicles as listed aforesaid, without the consent and approval of this Court," is not being questioned by the petitioner. It need not be passed upon.

The order in so far as it directs the petitioner, appellant therein, to deposit with the clerk of court the accumulated unpaid rentals including interest thereon in the total amount of ₱119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, is annulled and set aside for lack of jurisdiction of the respondent court to enter it, without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *J. B. L. Reyes, JJ.*, concur.

Order requiring the deposit of unpaid rentals is annulled and set aside.

[No. L-3052. June 29, 1954]

ANDRES E. VARELA *alias* ANDREW E. VARELA, plaintiff and appellant, *vs.* JOSE VILLANUEVA, ETC., ET AL., defendants and appellees.

1. JUDGMENTS; ANNULMENT ON GROUND OF FRAUD MUST BE EXTRINSIC OR COLLATERAL; PERJURY, NOT GROUND FOR ASSAILING JUDGMENT UNLESS FRAUD REFERS TO JURISDICTION; WHEN FRAUD CONSIDERED EXTRINSIC.—An action to annul a judgment, upon the ground of fraud, will not lie unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annuled was rendered; and false testimony or perjury is not a ground for assailing said judgment, unless the fraud refers to jurisdiction. Fraud is regarded as extrinsic or collateral, where it has prevented a party from having a trial or from presenting all of his case to the court.

2. ID.; ID.; ID.; ID.; ID.; CIRCUMSTANCES PRECLUDING ALLEGATIONS OF HAVING BEEN PREVENTED FROM HAVING A FAIR TRIAL.—Where it appears that efforts were exerted to discover the whereabouts of the party attacking the judgment; that the petition filed in the intestate proceeding wherein the judgment was rendered specifically alleged that he was the sole heir of his deceased brother; and that the proceedings lasted for quite some time,

thereby giving him ample opportunity to appear—he can not be said to have been prevented from having a fair trial.

3. ID.; ID.; ID.; ID.; ID.; ID.; JUDICIAL SETTLEMENT OR JUDGMENT ON THE MERITS.—Where all claims to the estate of the deceased were actually before the court, each claimant entitled and bound to establish his adverse claim, and upon a compromise agreement among the parties the court rendered judgment declaring who of said claimants had preferential right to the inheritance, there was a judicial settlement of the controversy and a judgment on the merits which may be annulled only upon the ground of extrinsic fraud.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; RECOGNITION OF NATURAL CHILD EXCLUDES COLLATERAL RELATIVES; FRAUD LEADING TO RECOGNITION MERELY INTRINSIC.—The recognition by the Court of First Instance of a person as acknowledged natural child of the deceased, and accordingly the sole heir of the latter, excluded collateral relatives from the inheritance; and the fraud, if any, that lead to such recognition, would merely be intrinsic, not justifying the annulment of a final judgment.

5. ACTIONS; INTESTATE PROCEEDING, ACTION "IN REM"; JUDGMENT BINDS THE WHOLE WORLD.—An intestate proceeding is an action *in rem* and the judgment therein is binding against the whole world.

6. PATERNITY AND FILIATION; RECOGNITION OF NATURAL CHILDREN; ACKNOWLEDGMENT MADE IN INDUBITABLE WRITING; BOOK OF MEMOIRS; SIGNATURE OF DECEASED DOES NOT DESTROY ITS AUTHENCITY AND PROBATIVE VALUE.—Although the book of memoirs indubitably acknowledging C as natural child, was not signed by the deceased, in view of the fact that the entries therein were in his own handwriting and conformed to actual facts, its authenticity and probative value can not be questioned.

APPEAL from a judgment of the Court of First Instance of Batangas, Angeles, J.

The facts are stated in the opinion of the court.

Mariano H. de Joya and *Numeriano U. Babao* for the plaintiff and appellant.

Claro M. Recto, Jose Perez Cardenas and *Jose M. Casal, Francisco G. Perez, Jose Avanceña* and *Quintin Paredes, Eulalio Chavez, Vicente Reyes Villavicencio,* and *Victoriano H. Endaya,* for the defendants and appellees.

PARÁS, *C. J.:*

Mariano R. Varela died in Batangas, Batangas, on September 5, 1940. Intestate proceedings (No. 3708) were instituted in the Court of First Instance of Batangas on September 16, 1940 by his first cousin, Jose Villanueva. The petition alleged that Mariano Varela was single at the time of his death and left as the sole heir his brother, Andres Varela y Villanueva, who had been absent from the Philippines since many years ago and last resided at No. 1343, 122nd Street, New York City, U. S. A. Efforts were immediately exerted by Jose Villanueva, through Rafael Villanueva, and by Marcelo P. Alay, a servant and protegee of the deceased, to contact Andres Varela, enlisting the aid and good offices of Francisco Varona, then attached to the

Philippine Resident Commissioner in Washington, D. C.; the Division of Territories and Island Possessions, Department of the Interior, Washington, D. C.; the Filipino National Council in New York; the U. S. Secretary of State; and Congressman Fred L. Crawford of Michigan. The whereabouts of Andres Varela, however, remained unknown. In the meantime, the petition in the intestate proceedings having been duly published, various collateral relatives of Mariano Varela had entered their appearances, namely, Rosario Rodriguez Varela, half-sister; Faustino Rodriguez Varela, son of a deceased half-brother; Felix Villanueva and brothers, first cousins; Manuel Villanueva and brothers (except Rafael Villanueva), first cousins; Rosario Villanueva and their brothers, first cousins; and Rosario Torres Watson and Enriqueta Torres Smith, first cousins. On November 6, 1940, over the opposition of Rosario Rodriguez Varela and Faustino Rodriguez Varela, the court appointed Jose Villanueva as administrator.

On February 14, 1941, Rosario Rodriguez Varela and Faustino Rodriguez Varela, on the one hand, and Carmelo Bautista, the latter represented by Josefa Enopia, on the other executed the following compromise agreement:

"ESTE CONVENIO DE TRANSACCIÓN otorgado y suscrito por:

"JOSEFA ENOPIA, mayor de edad, Filipina, vecina y residente en el municipio de Batangas, provincia de mismo nombre, Filipinas, en representación de su hijo Carmelo Bautista;

"ROSARIO RODRIGUEZ VARELA, soltera, mayor de edad, Filipina, vecina y residente en la ciudad de Manila, Filipinas;

"FAUSTINO RODRIGUEZ VARELA, mayor de edad, Filipino, casado, vecino y residente en la ciudad de Manila, Filipinas;

"ATESTIGUA, Que:

"1.° POR CUANTO Don Mariano Rodriguez Varela y Villanueva fallecio en el municipio de Batangas, provincia del mismo nombre, el 5 de septiembre de 1940;

"2.° POR CUANTO Don Mariano Rodriguez Varela y Villanueva falleció sin haber dejado testamento y con propiedades ubicadas en la provincia de Batangas que, de acuerdo con el inventario sometido por el Administrador Don Jose Villanueva monta a P45,251.00;

"3.° POR CUANTO dicho finado no ha dejado hijos al descendientes legitimos, ni tampoco padres o ascendinetes legitimos;

"4.° POR CUANTO de conformidad con las disposiciones de la ley, el único heredero legal del finado, con exclusión de todos los otros parientes, es un hijo natural reconocido llamado Carmelo Bautista, ahora menor de edad y representado en este documento por su madre y tutora natural Da. Josefa Enopia;

"5.° POR CUANTO el reconocimiento de dicho hijo consta en escrito indubitado del finado Mariano Rodriguez Varela y Villanueva, cuyo escrito obra en poder y se halla bajo la custodia del administrador Don Jose Villanueva y Romualdez.

"6.° POR CUANTO a los otros comparecientes, que son media hermana y sobrino, hijo de medio hermano, consta que el referido finado ha reconocido publicamente y continuadamente al joven Carmelo Bautista como su hijo natural y este ha disfrutado pública y continuadamente de tal estado de hijo natural reconocido;

"7.° POR CUANTO como ya se na dicho, el referido fiando Don Mariano Rodriguez Varela y Villanueva reconocio en vida, publica-

mente, a Carmelo Bautista como su hijo natural, presentandole asi a todos sus parientes, entre ellos los comparecientes, a sus amigos y a la sociedad en general, atendiendo a su subsistencia y educación y cuidando como un buen padre de familia del bienestar y porvenir de su citado hijo;

"8.° POR CUANTO los comparecientes no desean sostener entre si ningún litigio para la división de la herencia, pues a todos consta la legitimidad del derecho de Carmelo Bautista de reclamar para si, como único heredero legal abintestado del finado, toda la herencia de este, despues de deducidas las obligaciones que tuviere;

"9.° POR CUANTO por su parte, el hijo natural reconocido Carmelo Bautista, no desea tampoco quedarse para si con toda la herencia, privando a los hermanos y sobrinos del finado, entre ellos los otros comparecientes, de toda participación en la herencia, y siendo el deseo de dicho Carmelo Bautista el que todos participen en cierto sentido de la herencia relicta por su finado padre;

"POR TANTO, las partes han convenido en lo siguiente:

"(*a*) En que el citado Carmelo Bautista sea declarado como hijo natural reconocido del finado Don Mariano Rodriguez Varela y Villanueva, y como su único y legítimo heredero abintestado;

"(*b*) Que habiendo dejado el finado un hermano llamado Andres Rodriguez Varela, el cual se halla ausente de Filipinas, ignorandose su paradero ignorandose, asimismo, si existe o ha fallecido pues de él no se tiene noticias desde hace muchos años, el otorgante Carmelo Bautista se compromete a reservar de los bienes que reciba como su herencia del intestado de su difunto padre, bienes muebles o inmuebles por su valor equivalente a ₱12,000, en la inteligencia de que los frutos naturales, industriales o de otra indole que perciban los bienes perteneceran al otorgante Carmelo Bautista, quien solo vendra obligado a entregar al referido ausente, al tiempo de su presentación, bienes o dinero por valor de ₱12,000;

"(*c*) Que el otorgante Carmelo Bautista se compromete a entregar a su tia Da. Rosario Rodriguez Varela tan pronto como reciba la herencia de su difunto padre, bienes o metalico, a elección de esta, en la suma de ₱6,000;

"(*d*) El mismo Carmelo Bautista se compromete a pagar a su primo FAUSTINO RODRIGUEZ VARELA, tan pronto como reciba la herencia del finado bienes o matalico por la misma cantidad de ₱6,000;

"(*e*) Finalmente, que todas las partes comparecientes en este documento consideran este como una transacción de sus derechos hereditarios en los bienes relictos por el finado Don Mariano Rodriguez Varela y Villanueva, y renuncian a formular cualquier otra reclamación ahora o en lo futuro que pudiera derivarse de sus derechos hereditarios como parientes del referido finado, y renunciando los unos en favor de los otros cualquier derecho que pudiera derivarse de su cualidad de herederos abintestado del referido finado;

"(*f*) Que en caso de que el ausente Don Andres Rodriguez Varela no aparezca o sea declarado muerto, la participación que se le asigna en este documento acrecerá la parte del hijo natural reconocido y cualquier derecho que los otorgantes pudieran tener sobre dicha participación se renuncia expresamente por ellos en favor del hijo natural;

"(*g*) Queda especialmente convenido y pactado que este documento surtira efecto entre las partes—en cuanto a las obligaciones monetarias que en su virtud se contraen—tan pronto como haya sido aprobado por el Juzgado correspondiente, conviniendo las partes en someter este documento a la aprobación del Juzgado de Testamentarias que conoce del Intestado del finado Don Mariano Rodriguez Varela y Villanueva.

"Leido este documento por los otorgantes y encontrandolo conforme con lo por ellos convenido, la otorgan su consentimiento firmandolo por octuplicado en la ciudad de Manila, Filipinas, hoy a 14 de Febrero de 1941.

"Fdo.) ROSARIO RODRIGUEZ VARELA
"(Fdo.) JOSEFA ENOPIA en representación de su hijo Carmelo Bautista
"(Fdo.) FAUSTINO RODRIGUEZ VARELA."

On March 25, 1941, a motion was filed by Carmelo Bautista, praying that he be declared the sole heir of the deceased Mariano Varela, entitled to inherit all his properties; that the above-quoted compromise agreement (attached to the motion) be approved *in toto;* and that the administrator be ordered to pay, after payment of all debts and obligations, to Rosario Rodriguez Varela and Faustino Rodriguez Varela the amounts due them under said compromise agreement. Upon motion of attorney for some of the claimants, the hearing of the motion was postponed to April 7, 1941. On April 2, Atty. Jose Avanceña appeared for Rosario Rodriguez Varela, represented previously by Atty. Tomas Yumol. On April 7, 1941, the Court of First Instance of Batangas issued the following order:

"Tratase de una moción presentada por la representación de Carmelo Bautista, con la concurrencia de Da. Rosario Rodriguez Varela, media hermana del finado Mariano Rodriguez Varela, y Villanueva y su sobrino Faustino Rordiguez Varela en la que pide la aprobación de un convenio que obra unido a los autos en cuya virtud se pide que se declare al mencionado Carmelo Bautista, como hijo natural reconocido del difunto Mariano Rodriguez Varela y Villanueva, y como tal, único heredero de los bienes relictos por el mencionado finado, se autorice al administrador que pague, con cargo a la herencia, a Da. Rosario Rodriguez Varela y a D. Faustino Rodriguez Varela, la suma de ₱6,000 cada uno, reservandose, ademas, de los bienes remanentes del finado, bienes o metalico, montantes a la suma de ₱12,000 que habra de retener a su poder el hijo natural reconocido para ponerlo a disposición del hermano del finado llamado Andres Rodriguez Varela, quien se halla ausente de Filipinas desde hace muchos años, ignorandose actualmente su paradero, en la inteligencia de que, los frutos naturales, industriales o de otra indole que perciban los bienes asi reservados perteneceran al mencionado Carmelo Bautista, quien solo vendra obligado a entregar al referido ausente al tiempo de su presentación bienes o dinero por valor de ₱12,000.

"Con fecha de 29 de marzo del presente año, se registro en la Escribania de este Juzgado un escrito de comparecencia por el Abogado D. Claro M. Recto como abogado de Felix Villanueva y hermanos, Manuela Villanueva y hermanos (excepto Rafael Villanueva) y Rosario Torres Villanueva y hermanos, quienes alegando ser primos hermanos del finado y como tales personas interesadas en este intestado pidieron la proposición de la consideración de la moción de Carmelo Bautista que estaba señalada para el 2 de abril de 1941. El Juzgado, proveyendo a dicha moción, pospuso la vista para esta fecha.

"Llamada la vista de esta moción en el día de hoy, previa notificación a las partes interesadas, el Escribano dió cuenta de que se

ha recibido en la escribania un escrito firmado por el abogado Sr. Recto en la que con la conformidad de sus clientes, se retiraba de su representación. Ninguna otra persona comparecio por dichos opositores. Don Felix Villanueva, uno de dichos opositores, se limitó a comparecer como abogado del administrador y manifestó en corte abierta que habiendo firmado el administrador su conformidad a la moción, el no tenia objeción a su aprobación. Por el mencionado Carmelo Bautista compareó el Abogado Jose M. Casal y Rosario Rodriguez Varela y Faustino Rodriguez Varela comparecieron asistidos de su abogado Sr. Jose Avanceña, quien manifesto unirse al mocionante a los efectos de pedir la aprobación del convenio de transacción unido a los autos.

"Examinados los autos, resulta, que el finado Don Mariano Rodriguez Varela y Villanueva no ha dejado hijos ni descendientes legitimos, por lo que bajo las disposiciones de la ley son llamados a su sucesión los pariente colaterales quienes resultan ser hermano de doble vinculo llamado Andres Rodriguez Varela, Da. Rosario Rodriguez Varela y su sobrino, hijo de medio hermano, Faustino Rodriguez Varela, quien deberá concurrir a la herencia con ella por derecho de representación.

"Tratandose como se trata, de una sucesión intestada, los parientes mas proximos excluyen los mas remotes y por consiguiente los hermanos y sobrinos excluyen de la herencia los primos y demas parientes en el mismo grado que estos.

"Resulta también, que dicha Da. Rosario Rodriguez Varela y su sobrino Faustino Rodriguez Varela, que como quedo dicho son llamados a la sucesión de este intestado por ministerio de la ley, reconocen, en virtud del documento cuya aprobación se pide, que el finado Don Mariano Rodriguez Varela y Villanueva, ha dejado un hijo natural reconocido públicamente llamado Carmelo Bautista y este, como tál hijo natural reconocido, viene a sucederle en sus derechos y acciones y demas bienes con la exclusión de todos los parientes colaterales.

"Y resultando, que este convenio se ha hecho por los comparecientes, Rosario Rodriguez Varela y Faustino Rodriguez Varela en perjuicio aparente de sus propios intereses, puesto que el reconocimiento que en el documento hacen de la existencia de un hijo natural reconocido del finado y de la posesión pública que este hijo natural ha gozado de su estado de hijo natural durante la vida del finado, les excluye de toda participación a la herencia de esta, el Juzgado no halla otra alternativa mas que aprobar éste convenio en los terminos en que esta redactado, salvando cualquier derecho que pudiera tener el hermano ausente Andres Rodriguez Varela, en el caso de que compareciere.

"En SU VIRTUD con la aprobación del convenio unido a los autos otorgado por Carmelo Bautista, representado por su tutora Da. Josefa Enopia, por un lado, y Da. Rosario Rodriguez Varela y Faustino Rodriguez Varela por otro, se declara al joven Carmelo Bautista como hijo natural reconocido del finado Mariano Rodriguez Varela y Villanueva con derecho a sucederle en todos sus bienes y se ordena al administrador a que de los fondos que tenga en su poder o de los que pudiera procurarse con los bienes relictos por el finado, pague a Da. Rosario Rodriguez Varela y Faustino Rodriguez Varela la suma de ₱6,000 cada uno, en cumplimiento de los terminos del convenio."

On October 29, 1942, the administrator filed a petition for the delivery of the properties to Carmelo Bautista and for the closing of the intestate proceedings. On January 28, 1943, the court ordered Carmelo Bautista to file a

bond for ₱12,000 to secure the payment of the amount due under the compromise agreement to Andres Varela, his heirs or successors-in-interest, or that a lien in the same amount be noted in Certificate of Title No. 5418 covering the land one-half of which corresponded to Carmelo Bautista. Upon petition filed by the administrator on February 1, 1943, the court issued an order on February 2, declaring the intestate proceedings closed.

On January 2, 1946, Andres E. Varela *alias* Andrew E. Varela, filed a complaint in the Court of First Instance of Batangas against Jose Villanueva and others, in the main praying that the order of April 7, 1941, issued in Special Procedings No. 3708 be annulled and that Andres Varela be declared the sole heir of his deceased brother Mariano Varela. On October 7, 1947, Andres Varela filed an amended complaint with practically the same prayer. Plaintiff's theory is that the defendants Jose Villanueva, Rafael Villanueva, Josefa Enopia, Rosario Rodriguez Varela, Faustino Rodriguez Varela, Jose Perez Cardenas and Jose M. Casal conspired together in fraudulently causing the Court of First Instance of Batangas to issue the order of April 7, 1941. After trial, the court rendered on August 12, 1948, a decision the dispositive parts of which read as follows:

"WHEREFORE, judgment is hereby rendered as follows:

"(a) The plaintiff is ordered to deliver the possession of the properties: to Luisa Villanueva the land described in Transfer Certificate of Title No. 3271 of the Province of Batangas, the cadastral lots Nos. 971 and 968 of the municipality of Batangas, and the proindiviso one-half share of the land described in the Original Certificate of Title No. 139, Province of Batangas, and the following personal properties, a mirror and a small marble table parted in the middle which Andres Varela had taken; to Jose Villanueva, the land covered by Transfer Certificate of Title No. 3677, Province of Batangas; to Encarnacion Samos and her minor children the land described in Transfer Certificate of Title No. 4021 of the Province of Batangas; to Encarnacion Samos and her minos children a portion of 7/12 share of the land described in Transfer Certificate of Title No. 3800 of the Province of Batangas and to the minor children of Carmelo Bautista, namely Carmen, Romeo and Fe, all surnamed Varela, the undivided one-half share of the land described in the Transfer Certificate of Title No. 5418 of the Province of Batangas, the parcels of land described in Tax Declarations Nos. 63881, 53205, 59595 (which is a portion of the land described in Transfer Certificate of Title No. 342 of the Province of Batangas), and 48758, all of them in the municipality of Batangas, Batangas, and an undivided one-half share in the land described in the Original Certificate of Title No. 140 of the Province of Batangas, all of which are identified as the properties described in letters I, J, K, L, M and N of paragraph 5 of the amended complaint, and the following personal properties, eight chairs, two tables, two wardrobes, one bed and one desk. The defendant Luisa Villanueva has presented no proof of the value of the mirror and the small marble table, neither the minor children of Carmelo Bautista have offered proof of the value of the personal properties above-described, all of which had been taken from them by the plaintiff, and, therefore, the court

is not in a position to render a money judgment against the plaintiff for the value of the said furniture and fixtures in the event that their re-delivery cannot be effected;

"(b) The plaintiff is hereby sentenced to pay to Jose Villanueva the sum of ₱1,026.73 damages suffered by him for the wrongful attachment of his properties with legal interest from the date of this decision;

"(c) the plaintiff is sentenced to pay to the minor children of Carmelo Bautista the amount of ₱6,492.50 the value of 209 cavanes of palay, and ₱30 the value of 62 gantas of corn, and to deliver 13 gantas of mongo, the value of which has not been proven, and also to pay ₱150 the proceeds of the sale of coconut fruits with legal interest thereon from the date of this judgment;

"(d) The plaintiff is sentenced to pay Luisa Villanueva the total sum of ₱3,270 the value of palay harvested and income received from the land with legal interest from the date of this decision; and

"(e) The complaint is hereby dismissed with costs against the plaintiff, and the attachment levied upon the properties of the defendants Jose Villanueva and Luisa Villanueva, as also the notice of *lis pendes* recorded on the back of the titles of the properties belonging to the defendants, the subject matter of the present litigation, are hereby ordered discharged and cancelled."

The plaintiff Andres Varela has appealed. To start with, we may state that the present action was filed three years after the final closing of the intestate proceedings of Mariano Varela, and that the rule is that an action to annul a judgment, upon the ground of fraud, will not lie unless the fraud, be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered, and that false testimony or perjury is not a ground for assailing said judgment, unless the fraud refers to jurisdiction (Labayan *vs.* Talisay-Silay Milling Co., 68 Phil., 376); that fraud has been regarded as extrinsic or collateral, where it has prevented a party from having a trial or from presenting all of his case to the court (33 Am. Jur., pp. 230–232). The reason for this rule has been aptly stated in Almeda et al. *vs.* Cruz, 47 Off. Gaz., 1179:

"Fraud to be ground for nullity of a judgment must be extrinsic to the litigation. Were not this the rule there would be no end to litigations, perjury being of such common occurrence in trials. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehood to his adversary's proofs. But the settled law is that judicial determination however erroneous of matters brought within the court's jurisdiction cannot be invalidated in another proceeding. It is the business of a party to meet and repel his opponent's perjured evidence."

The deceased Mariano Varela left a book of memoirs in his own handwriting discovered by the administrator Jose Villanueva among his belongings, which book was presented in evidence as Exhibit I. The following entries are contained in said book:

"1920. Josefa Enopia se unio conmigo en la noche del día sabado 16 de octubre de 1920, en Manila y estuvo toda la noche conmigo.

"(Exhibit 1-a.)

"1921. El 16 de Octubre de 1920, día en que apadriné a Ramon Tarnate, fue la primera vez en que Epay Enopia durmió conmigo en Manila, y desde entonces una vez al mes durmiamos juntos, hasta el 4 de Febrero 1921, que era carvanal.

"Desde el mes de Diciembre dijo que ella estaba en cinta.

"Julio. El día 16 sabado 11:30 p. m. dió a luz un niño. De modo que a los nueve meses consideiendo en el mismo día Sabado y fecha 16, daba a luz.

"En el registro civil en el Municipio aparece registrado el casamiento de Josefa Enopia con Gaudencio Bautista, el 19 de Junio de 1921, este es su anterior pretendiente, que yo fui preferido y aceptado a el.

"No me cabe duda que este chiquillo es mio.

"El día Domingo 22 de Enero de 1922, fiesta del pueblo, yo *fui* el padrino de este niño, a petición de toda la familia y se le puso el nombre de Carmelo.

"(Exhibits 1-b and 1-c.)"

The foregoing entries formed the principal basis for the execution of the compromise agreement between Rosario Rodriguez Varela and Faustino Rodriguez Varela, on the one hand, and Josefa Enopia, in representation of Carmelo Bautista, on the other, which in turn led to the order of the Court of First Instance of Batangas dated April 7, 1941, declaring Carmelo Bautista as acknowledged natural child of Mariano Varela, entitled to succeed to all his estate.

As Rosario Rodriguez Varela and Faustino Rodriguez Varela were represented by counsel both in the execution of the compromise agreement and in the hearing for the approval by the Court of First Instance of Batangas of said compromise agreement, it cannot be contended that they were not aware of the true facts surrounding the proceedings. Indeed, they uncomplainingly accepted the benefits of said agreement.

As already stated, at the commencement of the intestate proceedings, a thorough search for the whereabouts of Andres Varela was made, and all available agencies were asked to lend their assistance in locating him. Even Marcelo Alay, a witness for the plaintiff and a protegee of Mariano Varela, himself made necessary inquiries. Indeed, in his letter written on June 22, 1941, to the Resident Commissioner in Washington, he made the special request that Andres Varela be advised to attend to the properties and wealth left by his brother Mariano Varela, because some other interested parties were taking charge of said wealth amounting to more than ₱200,000 at the same time informing that Andres was the nearest and rightful heir of his brother Mariano. It is difficult to believe that Andres Varela was purposely prevented from having or deprived of his day in court because, first, in the petition filed in the

intestate proceedings by Jose Villanueva, who was appointed administrator of the estate of Mariano Varela, it was specifically alleged that Andres was the sole heir of his deceased brother Mariano Varela; secondly, no stone was left unturned in discovering the whereabouts of Andres Varela; and, thirdly, the intestate proceedings lasted for quite some time, having been started on Septebmer 16, 1940 and finally closed only on February 2, 1943, thereby giving ample opportunity for Andres to appear. That there was not the least intention to disinherit Andres Varela, although the existence of Carmelo Bautista as acknowledged natural child of the deceased Mariano Varela, necessarily excluded him and other collateral relatives, is shown by the fact that provision was made in the compromise agreement, reserving to him the share of ₱12,000, which was twice as much as the share granted to Rosario Rodriguez Varela and Faustino Rodriguez Varela.

There can be no question about the authenticity and probative value of the book of memoirs, since even plaintiff's principal witness, Teofilo Gui (confidential secretary of Mariano Varela), testified that the entries therein are in the handwriting of Mariano; although more than two months after said testimony was given, Teofilo was recalled to the witness stand, and in redirect examination declared that he admitted that said memoirs are in the handwriting of Mariano Varela, because, when the book was handed to him in the former hearing, he saw the name Mariano R. Varela appearing on the back thereof. This rather belated explanation is unconvincing. Moreover, while some opposing attorneys secured copies of the entries in Exhibit "I" for examination by the NBI handwriting experts, they had failed to submit in evidence any such examination or analysis.

The force and effect of the acknowledgment made by Mariano Varela in his book of memoirs of Carmelo Bautista as his natural son is sought to be nullified by the plaintiff-appellant, by contending that Josefa Enopia, mother of Carmelo was married to Gaudencio Bautista, on June 19, 1921, and that Carmelo was born during said marriage. There is, however, ample evidence tending to show that Josefa was forced by her father to marry Gaudencio and that, prior to and after her marriage to Gaudencio, she never had any carnal contact with him; that in the decision of the Court of First Instance of Quezon City rendered on March 10, 1941, from which no appeal was taken, the marriage of Josefa to Gaudencio was declared null and void, and Josefa's children were declared to have never been neither legitimate nor illegitimate children of Gaudencio. The regularity of the annulment proceedings, apart from being legally presumed, is borne out by

the testimony of Juan Solijon, a lawyer and a witness for plaintiff-appellant, and of course by that of Josefa Enopia and her lawyers.

In Special Proceedings No. 3708 of the Court of First Instance of Batangas, claims to the estate of Mariano Varela were actually before the court, affecting Rosario Rodriguez Varela, Faustino Rodriguez Varela and several other first cousins of Mariano, and even the plaintiff-appellant himself as alleged in the petition filed by Jose Villanueva; and said claims logically were in conflict with the later claim interposed on behalf of Carmelo Bautista. The court was called upon to determine who of said claimants had preferential right to the inheritance, and each claimant of course was entitled and bound not only to dispute Carmelo's alleged right but also to establish his adverse claim. The issue thus presented, was disposed of in the order of April 7, 1941, approving the compromise agreement entered into between Carmelo Bautista, represented by Josefa Enopia, and Rosario Rodriguez Varela and Faustino Rodriguez Varela, the two nearest kin next to Carmelo that necessarily excluded the other collateral relatives. There was accordingly a judicial settlement of the controversy, and said order of April 7, 1941, was no less a judgment on the merits which may be annulled only upon the ground of extrinsic fraud.

The plaintiff-appellant has failed to demonstrate, notwithstanding his elaborate efforts, that there was such extrinsic or collateral fraud as would justify the setting aside of the order of April 7, 1941. As already noted, he cannot be said to have been prevented from having a fair trial. On the contrary, it may be said that plaintiff was rather indifferent to his interests, because, although he had been absent from the Philippines since 1910, he never took the trouble or precaution of informing his brother Mariano of his whereabouts from time to time, and likewise failed to give any instructions to anybody who could protect his rights, knowing that, as early as 1933, he was, as regards his brother Mariano, the nearest of kin who might succeed to his estate in case of death. The implication that follows is that the plaintiff-appellant in effect had abandoned his hereditary rights in the Philippines. It is improbable that, as claimed by him, he had stayed in the mountains in the United States recuperating from an illness from 1939 to 1942, without any facility for correspondence to the Philippines, especially when it is recalled that he admitted that he was not so sick that he could not write if he wanted to. His claim that there was no mail in the place, is also of little moment, since he could have commissioned somebody to go to the nearest post office, there being no pretense that his situation was such that he was cut from all sorts of communication. At the risk

of repetition, much less can Jose Villanueva be charged with having wished to eliminate plaintiff-appellant from succeeding to the estate left by Mariano Varela, as Jose Villanueva himself alleged in his petition filed in the intestate proceedings that the sole surviving heir of Mariano was Andres Varela, and he made extensive inquiries about his whereabouts in the United States.

The fraud which plaintiff-appellant has attempted to show under the evidence presented in the court below, consists of misrepresentations about the existence of Carmelo Bautista as an acknowledged natural child of Mariano Varela. Assuming that there were falsities on this aspect of the case, they make out merely intrinsic fraud which, as already noted, is not sufficient to annul a judgment. And yet, we agree with the trial court that the evidence preponderates in favor of the conclusion that Carmelo Bautista had been shown to be an acknowledged natural child of Mariano Varela.

Appellant likewise tried to prove, through the testimony of Rosario Rodriguez Varela and Faustino Rodriguez Varela that the latter had signed the compromise agreement without reading its contents, in the first place, Rosario Rodriguez Varela and Faustino Rodriguez Varela have now aligned themselves with appellant's cause, for the obvious reason that their share in the inheritance would be much greater if Carmelo Bautista is excluded. In the second place, the allegation of Rosario Rodriguez Varela that she did not speak English (and therefore could not understand the compromise agreement) is negative by the fact that said agreement was written in Spanish; and Rosario testified in Spanish. In the third place, Rosario testified that at the signing only she, her nephew Rafael Villanueva, and Attys. Cardenas and Casal were present, and yet her nephew stated that they were accompanied by their lawyer, Atty. Godofredo del Rosario, and that Josefa Enopia was there once. Indeed, Godofredo del Rosario and Josefa Enopia signed the agreement, the first as a witness and the latter as a party. In the fourth place, Faustino Rodriguez Varela admitted that he spoke Spanish, and he was therefore in a position to be aware of the contents of the compromise agreement. In the fifth place, both Rosario Rodriguez Varela and Faustino Rodriguez Varela had filed their claims as collateral relatives, were represented by counsel, opposed the appointment of Jose Villanueva as administrator of the estate; and it is improbable that they would sign any compromise agreement without being certain of the true facts. In the last place, the claim of Faustino Rodriguez Varela that he and Rosario signed the document in a hurry, because Atty. Cardenas wanted to bring it to Batangas, and that he signed when told by his attorney that, if something wrong was discovered later, he should be in-

formed thereof, is apparently without any basis; since the compromise agreement was not submitted to the court until March 25, 1941, the motion for its approval was not heard until April 7, 1941, and the agreement had been signed as early as February 14, 1941. Moreover, it is surprising that, notwithstanding the advise of his counsel to inform him if something wrong was discovered, nothing was done from 1941 to the date of the filing of appellant's complaint, although it is admitted that copy of the agreement was given to Faustino Rodriguez Varela, at the latest, after having been paid what was stipulated in said agreement.

Atty. Jose Perez Cardenas explained the steps leading to the signing of the compromise agreement, and he testified that Atty. Jose Avanceña, representing Rosario Rodriguez Varela and Faustino Rodriguez Varela, was given a draft which finally gave to his two clients ₱6,000 each, and that at the signing of the document Rosario and Faustino were accompanied not only by Atty. Avanceña but also by Atty del Rosario. It is significant that neither of said attorneys was placed on the witness stand by appellant to negative Atty. Cardenas' testimony.

Appellant presented in evidence, to show that Carmelo was the child of Josefa Enopia with Gaudencio Bautista, a baptismal certificate (Exhibit "D"), purporting to show that Carmelo was their legitimate son. It appears, however, that on cross-examination, Reverend Father Eustaquio Daite, who testified that the certificate was an exact copy of the original, admitted that the word "legitimate" did not appear in the parrochial book. Exhibit "CC" was also presented, a supposed copy of the original record of the marriage of Josefa and Gaudencio, and yet it does not contain the notation made by the civil registrar regarding the annulment of said marriage. These omissions were taken by the trial court as indications of a false claim on the part of plaintiff-appellant, and it is not without foundation.

The testimony of Teofilo Cui to the effect that Jose Villanueva had told him that they should produce a son of the deceased Mariano Varela so that they could get a portion of his estate, is rather inconsistent with the frankness of Jose Villanueva in alleging in the petition filed in the intestate proceedings that the sole heir of Mariano was his brother Andres, palintiff-appellant. Considering that Teofilo had presented a claim against the estate of Mariano Varela in the amount of ₱2,040, which, in view of the opposition of Jose Villanueva, was reduced to ₱300, it is easy to undestand why Teofilo could not have been without any motive for testifying against Jose Villanueva.

Antonio Villanueva, another witness for appellant, declared that he heard Atty. Cardenas suggest that they could present somebody as a son of Mariano Varela, because of

the claims filed by Rosario Rodriguez Varela and Faustino Rodriguez Varela. The veracity of this witness is again doubtful, it appearing that he alledge having heard the conversation after the war or during the war, when the intestate proceedings took place in 1940 and 1941 and Carmelo's claim was filed long before the war; and that said conversation was in the law office of Atty. Cardenas and Casal at 34 Escolta, Manila, when it is beyond question that said office was on the second floor of the National City Bank Building at Juan Luna, Manila, at the institution of the intestate proceedings.

Exhibits "F" and "G" were presented by plaintiff-appellant, the first being an affidavit of Josefa Enopia tending to show that she was induced to testify before the Court of first instance of Batangas that Carmelo Bautista was the son of Mariano Varela, when in fact he was a child of Gaudencio Bautista; the second being an affidavit of Cristina Marajas, Carmelo's widow, to the effect that she was returning the property she had received after she learned that her deceased husband Carmelo was not a natural child recognized by Mariano. We are inclined to give no weight to said exhibits, which have been repudiated by Josefa and Cristina during the trial.

Appellant argues that he cannot be bound by the compromise agreement because he was not a party thereto. In answer it is sufficient to state that the intestate proceedings were *in rem* and the judgment therein, declaring Carmelo Bautista the sole heir of the deceased Mariano Varela, was therefore binding against the whole world. Section 44(*a*) of Rule 39 of the Rules of Court provides that: "In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate." As aptly commented by Chief Justice Moran, "Subdivision (*a*) refers to judgments *in rem*. Thus, a judgment rendered in connection with a petition for the probate of a will is binding upon the whole world. A judgment concerning personal, political, or legal condition or relation of a particular person, as, for instance, a judgment in intestate or testate proceedings, declaring who the heirs of the deceased person are, or a judgment in an application for citizenship, or a judgment adjudging a person to be a spendthrift, may be considered as a judgment *in rem*, binding on the whole world." (Moran, Comment on the Rules of Court, 2d Ed. Vol. II. p. 704.)

Even if the plaintiff Andres Varela had appeared and activity taken part in Special Proceedings No. 3708, the result would have been the same, in the sense that the recognition by the Court of First Instance of Batangas of Carmelo Bautista as acknowledged natural child of Mariano Varela, and accordingly the sole heir of the latter, would also have excluded appellant from any inheritance, being merely a collateral relative; and the fraud, if any, that would lead to such recognition, would merely be intrinsic, no justifying the annulment of a final judgment. The present case should be distinguished from that of Anuran *vs.* Aquino, 38 Phil., 29, wherein the estate of the deceased Ambrosio Aquino was awarded and delivered to the defendant Ana Aquino, because, although the latter and the administrator knew that the plaintiff Florencia Anuran was the surviving spouse of Ambrosio Aquino, and that the defendant Ana Aquino was not a legitimate but only a natural daughter of the deceased sister of Ambrosio, the said Ana Aquino and administrator, without notice to the widow, and acting in collusion, fraudulently procured the entry of the order in the administration proceedings approving the delivery of all the estate to Ana Aquino. It will be noted that in the Anuran case, the mere appearance of the plaintiff Florencia Anuran (prevented from having a trial) changed the result of the order sought to be annulled.

Plaintiff-appellant invokes the reservation contained in the order of April 7, 1941, namely, "salvando cualquier derecho que pudiera tener el hermano ausente, Andres Rodriguez Varela, en el caso que compareciere." It appears, however, that said reservation is recited in the course of the order, and not in the dispositive part declaring Carmelo Bautista as the acknowledged natural son of Mariano Varela, entitled to succeed to his estate. The dispositive part logically excludes the recognition of any successional right on the part of the appellant, and that this was the sense of the order is shown by the fact that, after Carmelo had put up a bond in the amount of ₱12,000 to answer for the obligation in favor of appellant, as covenanted in the compromise agreement approved by the court, the intestate proceedings were declared definitely closed. The clause, "en el caso que compareciere" should merely mean that appearance by the appellant contemplated therein was to be within the period before the final closing of the proceedings.

Neither is there anything irregular in the action of the trial court in making an express finding to the effect that Carmelo Bautista, under the evidence presented in the present case, was an acknowledged natural child of the deceased Mariano Varela. As explained in the appealed judgment, although the order of April 7, 1941 was final

and not tainted with extrinsic fraud, the trial court had to make a pronouncement of fact under the evidence presented by appellant which, however, had reference merly to intrinsic fraud

The book of memoirs, indubitably evidencing Carmelo Bautista's recognition by Mariano Varela as the latter's acknowledged natural child, is assailed by plaintiff-appellant for not being signed by its author. This criticism is of no moment, because the entries therein are in the handwritting of Mariano and proved to be so by the very key witness for appellant, Teofilo Gui. We have elsewhere pointed out the reason why the attempt of appellant to have Teofilo Gui, upon being recalled to the witness stand two months after his direct examination, explain his damaging testimony, may not be believed. In this connection, it may be added that, in at least two instances cited in the appealed decision, the entries in the book have been shown to conform to the actual facts. We quote from said decision: "For instance, the last entry on page 26, which reads: El 16 de Octubre de 1920, día en que apadrine a Ramon Tarnate, etc., * * * is fully corroborated by the marriage certificate Exhibit 1-F, wherein it is shown that on October 16, 1920, Ramon Tarnate was married to Mercedes de la Peña, and one of the sponsors or witnesses to the wedding was Mariano R. Varela. Again, the second entry appearing on page 25, which reads: Mi buena y querida Mama falleció en mi cuarto, sentada en mi butaca, el 8 de Sept. día Domingo y día de la Correa, las 4:45 p.m. de 1918, y al día siguiente fueron sus funerales en este pueblo de Batangas, * * * is also confirmed by the death certificate of Julia Villanueva, the mother of Mariano Varela, wherein it is shown that said Julia Villanueva died on September 8, 1918."

Plaintiff-appellant capitalizes the circumstance that Carmelo had used the surname Bautista, to show that he was not the child of the deceased Mariano Varela. Apart from the denial of Josefa Enopia, Carmelo's mother, and Cristina Marajas, his widow, the use of that surname finds its explanation in the fact that Josefa Enopia was forcibly married by her father to Gaudencio Bautista to protect her honor, and it should be an indiscretion on her part to let the people know, by using the surname Varela, that Carmelo and her other children are those of Mariano Varela to whom she was not married. The same explanation controls with reference to the circumstance that Josefa did not reveal her relations with Mariano until the latter's death.

Appellant contends that the trial court erred in not finding that Jose Villanueva did not include in his inventory in Special Proceedings No. 3708 the jewelries belonging to appellant and his brother Mariano Varela which were

taken by defendant-appellee Jose Villanueva. According to appellant, the collection of jewelries and coins referred to was worth ₱234,560 as early as 1910, and he even went to the extent of describing the various items; and in 1933, when appellant learned through his brother that his mother and sister had died, the estate left by these two was worth at least ₱250,000. Appellant's theory is hard to sustain. There is evidence to show that in 1912 the properties of Sinforoso Varela, father of appellant and Mariano Varela, were sold at an execution sale to satisfy a debt of only ₱1,500, and this is quite inconsistent with the existence of the jewels claimed to have been "looted" by appellee Jose Villanueva. At the time appellant learned of the death of his mother and sister, he was earning only enough to cover his expenses and save a little; and yet, if he was certain that there were such jewels as now claimed by him, he never bothered about returning to the Philippines to receive his share in the fortune. It cannot be said that he trusted his relatives in the Philippines, because no sooner had he learned of the death of his brother Mariano than he lost no time in returning home. The trend of appellant's evidence is also to the effect that appellee Jose Villanueva grabbed the valuable jewels and coins left by Mariano Varela in the presence of appellant's witnesses, like Teofilo Gui, Marcelo Alay and Aurea Eumague. In the ordinary course of things, if Jose Villanueva really intended to take possession of Mariano Varela's jewelries and coins, he would have done so surreptitiously. Moreover, as elsewhere adverted to, Teofilo Gui's claim against the estate of Mariano Varela was opposed by administrator Jose Villanueva and this left Teofilo with at least some motive for being hostile to the former. Upon the other hand, Marcelo Alay and Aurea Eumague might themselves have been biased, in that the first admittedly had a quarrel with the Villanuevas because the latter ordered the cutting of Marcelo's banana plantation which caused him damage, and they told him to leave the house where he was staying, for Mrs. Villanueva was going to burn it; and the second admittedly was working for and being supported by the appellant in his house at the time of the trial. On top of these, although Jose Villanueva submitted to the court the required inventory of the properties of Mariano Varela as early as December 14, 1940, no opposition was registered thereto, notwithstanding the fact that Rosario Rodriguez Varela and Faustino Rodriguez Varela appeared in the intestate proceedings and even assailed the appointment of Jose Villanueva as administrator.

We have found nothing wrong in the agreement for attorneys' fees between Atty. Jose Perez Cardenas and Josefa Enopia. Atty. Cardenas represented the interest of Carmelo Bautista, agreeing to bear all the expenses of

the litigation, on condition that he would receive one half of everything awarded to Carmelo. The fee is clearly contingent, and as Atty. Cardenas ultimately received less than ₱20,000, it cannot be held that the fee was excessive, much less unconscionable. Indeed, the arrangement was submitted to and approved by the court.

For the rest, we agree to the appealed decision as regards the various properties that passed to the defendants appellees pursuant to and as a result of the recognition of Carmelo Bautista as the sole heir of the deceased Mariano Varela, in relation to the compromise agreement between Josefa Enopia, in representation of Carmelo Bautista, and Rosario Rodriguez Varela and Faustino Rodriguez Varela. The trial court has particularized the properties thus conveyed, as follows:

"PROPERTIES CONVEYED TO LUISA VILLANUEVA:

"By virtue of the aforesaid order of the court of April 7, 1941, and in order to comply with that portion of the order to pay to Rosario R. Varela and Faustino R. Varela the sum of ₱6,000 to each, the administrator filed a motion in court on June 6, 1941, praying the court to approve the deed of sale over four parcels of land, the first, is covered by Original Certificate of Title No. 5417 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit SS); the second and third, are cadastral lots Nos. 971 and 968, which until now are not covered by any Torrens title, but their tax declarations appear in the exclusive name of Mariano R. Valera (Exhibits 55-1 and TT); and the fourth is covered by Original Certificate of Title No. O-139 of the Province of Batangas, in the names of Mariano R. Varela, single and Andres E. Varela single, pro-indiviso and in equal shares (Exhibit GG), and the total assessed value of the said four parcels is ₱2,127, which said administrator has executed in favor of Luisa Villanueva, a defendant in the instant case, for the sum of ₱10,000. After consideration by the court of the aforesaid motion, the same was approved. The administrator received from Luisa Villanueva the amount of ₱10,000, which together with an additional sum of ₱2,000, that the administrator took from the funds of the estate, making a total of ₱12,000, was paid to Rosario R. Varela and Faustino R. Varela, each, receiving the sum of ₱6,000, receipt of which was acknowledged by them. The Original Certificate of Title No. 5417 has already been cancelled by Transfer Certificate of Title No. 3271 which is now in the name of Luisa Villanueva. Luisa Villanueva took immediate possession of the property through her overseer, treated and dealt with it as her own. However, when Andres Varela arrived in Batangas (he arrived in August 1946), and with the help of other persons, he took possession of the property without the consent of its owner, Luisa Villanueva, depriving her of the use and enjoyment thereof and of the fruits therefrom.

"ADJUDICATED SHARE TO ANDRES E. VARELA IN THE INTESTATE ESTATE OF MARIANO VARELA:

"In the agreement Exhibit E-1, Andres Varela was given a share in the estate of his deceased brother equivalent to ₱12,000 which Carmelo Bautista agreed to satisfy either in movable or immovable properties in the event that said Andres Varela would be found alive, and in the order of April 7, 1941, the court provided that out of the properties which Carmelo Bautista shall receive as inheritance

there shall be reserved for the use and benefit of Andres Varela properties either movable or immovable equivalent to the value of ₱12,000. In compliance with the said agreement and order of the court, the property described in the Original Certificate of Title No. 5418 of the Province of Batangas, registered in the name of Mariano R. Varela and Andres E. Varela pro-indiviso and in equal shares, the half portion pertaining to Mariano R. Varela in said land which has been adjudicated to Carmelo Bautista as part of his inheritance was made to answer of an encumbrance in favor of Andres Varela for the sum of ₱12,000, as appears duly noted on the said title (Exhibits FF and JJJ).

"PROPERTIES CONVEYED TO JOSE PEREZ CARDENAS AND PORTIONS OF THEM SOLD TO JOSE VILLANUEVA, JOSE M. CASAL, AND RAFAEL VILLANUEVA:

"On May 29, 1941, attorney Cardenas filed a motion in the intestate proceedings praying that his attorney's fees as agreed upon in the contract for attorney's fees of November 18, 1940 (Exhibit 34–*a*), be ordered paid by the heir Carmelo Bautista by delivering to said attorney Cardenas one half of the properties inherited by Carmelo Bautista from the estate. After hearing thereon, the court, on June 16, 1941, approved the contract for attorney's fees and it ordered that one-half of the properties inherited by Carmelo Bautista be delivered to said Attorney Cardenas. Upon a notarial document dated June 19, 1941 (Exhibit DD–1), executed by the administrator in favor of attorney Jose Perez Cardenas, the former conveyed to the latter certain real and personal properties taken from the share of Carmelo Bautista of his inheritance in the estate of his deceased father in full payment of Jose Perez Cardenas attorney's fees. The real properties consist of four parcels with the improvement thereon, the first is that covered by Transfer Certificate of Title No. 41194 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit RR); the second is that covered by Tranfer Certificate of Title No. 2584 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit PP-12); the third is that portion pertaining to Mariano R. Varela of an undivided interest of 7/12 share in the property covered by Original Certificate of Title No. 30998 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres R. Varela, in an undivided interest of 7/12 share for Mariano R. Varela and 5/12 share for Andres E. Varela (Exhibit DD); and the fourth is that portion pertaining to Mariano R. Varela of an undivided interest of 7/12 share in the property covered by Original Certificate of Title No. 30997 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres R. Varela, in an undivided interest of 7/12 share for Mariano R. Varela and 5/12 share for Andres E. Varela (Exhibit EE). And the personal property consists of a gold ring with small diamonds appraised in the inventory for ₱60.

"Transfer Certificate of Title No. 41194 was cancelled by Transfer Certificate of Title No. 62344 issued in the name of Jose Perez Cardenas (Exhibit RR–1), and later sold by him to Victoria G. de Laperal of Manila, on October 27, 1941 (Exhibit RR–2), and this purchaser is not a party defendant in the case.

"Transfer Certificate of Title No. 2584 was cancelled by Transfer Certificate of Title No. 3318 issued in the name of Jose Perez Cardenas (Exhibit PP–13), who caused the subdivision of the land tion four lots, namely, lots 869–A, 869–B, 869–C, and 869–D (Exhibit PP–8). For lot 869–A, a new Transfer Certificate of Title No. 3697 (Exhibit PP–1) was obtained in the name of Jose Perez Cardenas and portion thereof had been sold by Cardenas to several

purchasers, the sales having been duly noted on the title, and said purchasers are not parties defendants in the case (See memorandum of incumbrances on back of title); lot 869–B was conveyed to Jose M. Casal (Exhibit PP–5), who secured in his name Transfer Certificate of Title No. 3676 (Exhibit PP–2), and later sold by him to Jose Linatok (Ehxibit PP–10), said purchaser having obtained in his name Transfer Certificate of Title No. 4021 (Exhibit 2–Linatok), and said last purchaser is a defendant in the case; lot 869–C was conveyed to Rafael Villanueva (Exhibit PP–6), who secured in his name Transfer Certificate of Title No. 3678 (Exhibit PP–3), and portions thereof had been sold to several purchasers, the sales having been duly noted on the title and said purchasers are not defendants in this case; and lot 869–D was conveyed to Jose Villanueva (Exhibit PP–7), who secured in his name a new Transfer Certificate of Title No. 3677 (Exhibit PP–4).

"The third parcel of land conveyed by the administrator to Jose Perez Cardenas in payment of his attorney's fees was that described as cadastral lot No. 355 of the municipality of Batangas without reference to any Torrens Title. It appears, however, that said lot No. 355 with the improvements thereon is covered by Original Certificate of Title No. 30998 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres E. Varela in an undivided interest, 7/12 share for Mariano R. Varela and 5/12 share for Andres E. Varela (Exhibit DD). The interests and participation of 7/12 of Mariano R. Varela was conveyed to Jose Perez Cardenas and a new Transfer Certificate of Title No. 3523 was issued in the joint names of Jose Perez Cardenas and Andres Varela in an undivided interest and in the proportion of 7/12 for Jose Perez Cardenas and 5/12 for Andres E. Varela, respecting and preserving the share of Andres Varela (Exhibit DD–3). The share that accrued to Jose Perez Cardenas was conveyed by him to Encarnacion Samos (Exhibit DD–5), and a new Transfer Certificate of Title No. 3800 was issued in the joint names of Encarnacion Samos and Andres Varela in an undivided interest and in the proportion of 7/12 for Encarnacion Samos and 5/12 for Andres Varela (Exhibit DD–2). Encarnacion Samos together with her minor children Amelia Villanueva and Rafael Villanueva, Jr., are defendants in this case.

"The fourth and last parcel of land conveyed by the administrator to Jose Parez Cardenas in payment of his attorney's fees is described in the conveyance as cadastral lot No. 361 of the municipality of Batangas without reference to any Torrens title. It appears, however, that said parcel of land is covered by Original Certificate of Title No. 30997 of the Province of Batangas registered in the joint names of Mariano R. Varela and Andres E. Varela in an undivided interest and in the proportion of 7/12 for Mariano R. Varela and 5/12 for Andres E. Varela (Exhibit EE). The share of 7/12 pertaining to Mariano R. Varela was conveyed to Jose Perez Cardenas, and a new Transfer Certificate of Title No. 3522 was issued in the joint names of Jose Perez Cardenas and Andres Varela in an undivided interest and in the proportion of 7/12 and 5/12, respectively (Exhibit II–1).

"PROPERTIES ADJUDICATED TO CARMELO BAUTISTA AS HIS SHARE IN THE INHERITANCE:

"The properties adjudicated to Carmelo Bautista consists of real and personal properties as shown in the document Exhibit JJJ:

"(*a*) The share of Mariano R. Varela in the parcel of land situated in barrio Calicanto, Municipality of San Juan, Batangas, described in the Original Certificate of Title No. 5418 registered in the joint names of Mariano R. Varela and Andres E. Varela pro-indiviso and in equal shares (Exhibit FF).

"(*b*) That parcel of land, without Torrens title, declared under Tax Declaration of real property No. 63881, situated in barrio San Jose, Batangas, Batangas, in the exclusive name of Mariano R. Varela (Exhibit VV).

"(*c*) That parcel of land, without Torrens title situated in barrio San Jose, Batangas, Batangas, registered in the exclusive name of Mariano R. Varela under Tax Declaration of real property No. 53205 (Exhibit WW).

"(*d*) That parcel of land situated in barrio Sambat, Batangas, Batangas, with an area of 2,264 sq. m., which is a portion of a larger mass of land described in the Transfer Certificate of Title No. 342 of the Province of Batangas in the names of Ward B. Gregg and others which had been sold to several persons, among them Mariano R. Varela, the names of the purchasers are given in the attached list to the deed of conveyance executed by the said Ward B. Gregg and others (Exhibit 50–A), and the portion sold to Mariano Varela is the same land described in Tax Declaration of real property No. 59595 in the name of Mariano R. Varela (Exhibit XX).

"(*e*) That parcel of land described in the Original Certificate of Title No. 30494 of the Province of Batangas registered in the exclusive name of Mariano R. Varela (Exhibit 51), and which is the same land mentioned in the Tax Declaration of real property No. 48758 in the name of Mariano R. Varela (Exhibit YY).

"(*f*) That parcel of land situated in barrio Cuta, Batangas, Batangas, known as lot No. 102 of the Cadastral Survey of Batangas covered by Original Certificate of Title No. 140 of the Province of Batangas (Exhibit HH), in the joint names of Mariano R. Varela and Andres E. Varela, pro-indiviso and in equal shares. Although the title contains no notation of the interest pertaining to Carmelo Bautista, obviously, the interest and participation acquired by Carmelo Bautista could only be that of his deceased father.

"(*g*) And those movables, large cattles, and a credit against Doroteo Ylagan for ₱1,000 mentioned in the document of delivery Exhibit JJJ.

"PROPERTY CONVEYED TO MELECIO ARCEO:

"Melecio Arceo is made a defendant in this case for having purchased the cadastral lot No. 14076 situated in the barrio of San Jose, Batangas, Batangas, containing an area of a little over 40 hectares, from the administrator of the estate of Mariano R. Varela, deceased, which sale was duly approved by the court in said intestate proceedings of Mariano R. Varela Civil Case No. 3708 (Exhibit 1, 1–A, 1–B, 1–C and 2–Arceo). The consideration paid by the purchaser Arceo in the amount of ₱150, apparently seems to be out of reasonable proportion to the area of the land sold, but the documents have shown that the purchaser had certain acquired rights over the land for having purchased it from another person other than Mariano R. Varela, and to compromise the conflicting claims, for the land was also claimed by the estate of the deceased Mariano R. Varela, the administrator sold the interest of the estate for the amount of ₱150, which fact was made to appear in the motion of the administrator when the deed of sale was submitted to the court for approval (Exhibit 1–Arceo).

"From the documents presented by defendant Arceo, it appears that by virtue of writ of execution isued by the Court of First Instance of Manila on September 6, 1910, upon a judgment obtained by 'Jose T. Paterno, Albacea del finado Maximino M. A. Paterno, demandante, contra Sinforoso R. Varela, demandado', in Civil Case No. 1330–54, the Provincial Sheriff of Batangas levied execution upon certain parcels of land of the defendant Sinforoso R. Varela situated

in barrio Bilaga, Batangas, Batangas, containing an area of about 40 hectares, to satisfy a money judgment against said Sinforoso R. Varela in the sum of ₱1,500. The sale of the attached property of Sinforoso R. Varela was effected on January 18, 1912, and the judgment debtor having failed to redeem the property within the time fixed in the law, the Provincial Sheriff of Batangas executed a definite deed of sale on July 10, 1913, in favor of Jose T. Paterno, the purchaser at the execution sale. The documents also show that the defendant Arceo had acquired his right, title, and interest to the land which is now known as cadastral lot No. 14076 from the successors in interest of the said Jose T. Paterno.

"PROPERTY CONVEYED TO JOSE LINATOK:

"Under the amended complaint, Lucia Linatok, the eldest daughter of Jose Linatok, deceased, and Felisa Vergara, the surviving spouse of said deceased, for herself and as guardian *ad litem* of her minor children Silvestre, Artemio, Adelaida and Julita, all surnamed Linatok, have been included as parties defendants herein. The reason for their inclusion is the fact that Jose Linatok in life purchased from Jose M. Casal lot No. 869–B of the Batangas Cadastre containing an area of 54,768 square meters, more or less, situated in the Municipality of Batangas.

"The proofs demonstrate that in the lifetime of Jose Linatok, and to be more specific, on July 4, 1944, he purchased from Jose M. Casal said lot No. 869–B for the sum of ₱130,000 of which ₱4,000 were genuine Philippine currency and the balance Japanese Military notes, that said lot is now covered by Transfer Certificate of Title No. 4021 of the Province of Batangas issued in the name of Jose Linatok, married to Felisa Vergara; and Jose M. Casal acquired said lot from Jose Perez Cardenas who obtained same from the estate of Mariano Varela in Special Proceeding No. 3708 of this court as part payment of the fees of said attorney Jose Perez Cardenas; that said lot was a part of a greater mass of land covered by Transfer Certificate of Title No. 2584 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, and was accounted as property of the deceased in the inventory submitted by the administrator in the estate of Mariano Varela, deceased; that prior to the sale to Jose Linatok, said lot was covered by Transfer Certificate of Title No. 3676 of the Province of Batangas in the name of Jose M. Casal, free from any lien or encumbrance; that the Torrens title No. 4021 in the name of Jose Linatok, married to Felisa Vergara, is also free from any lien or encumbrance whatsoever; that Jose Linatok died in the year 1945, leaving as his surviving heirs the defendants Felisa Vergara and their children Lucia, Silvestre, Artemio, Adelaida and Julita; that due to the last war, Jose Linatok in life and his heirs after his death were not able to take immediate possession of said property, and said defendants were able to take possession only after the liberation of Batangas from the Japanese and remained in possession thereof for several months only, because shortly after the arrival of plaintiff in Batangas he forced the tenants in the land in question to quit paying their respective monthly rentals to defendants herein, but instead to him; that actually plaintiff is in possession of said lot No. 869–B.

"From the proofs, the court finds that Jose Linatok in whose name Transfer Certificate of Title No. 4021 of the land records of the Province of Batangas now stands is a purchaser for value and in good faith, and that his surviving heirs, defendants herein, have been deprived by the plaintiff of their possession thereof."

The trial court correctly held that, in respect of certain transfers involved in the litigation, the different purchasers

paid valuable consideration and on the faith of the titles covering the properties, and accordingly they are purchasers for value and in good faith. Upon the whole, we find the appealed decision to be supported by a preponderance of the evidence, unaffected by the fact that a part of the lost testimony had been retaken.

Wherefore, the appealed judgment in affirmed and it is so ordered with costs against the plaintiff-appellant.

Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

Pablo and *Padilla, JJ.,* did not take part.

Judgment affirmed.

[No. L-3663. 31 de mayo de 1954]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* MARÍA VELASCO RODRIGUEZ ET AL., acusados; CARLOS PARDO, acusado y apelante.

1. ASESINATO; PRUEBAS CLARAS DE CULPABILIDAD.—A eso de las 10 de la noche, el occiso fué apuñalado en el pecho mientras dormía en su casa y murió. Poco antes del suceso, obedeciendo orden de su teniente, un guerrillero fué a la casa del occiso, tambien guerrillero, en relación con el apresamiento de un espía de los japoneses. Encontrando la puerta del cerco cerrada el guerrillero pasó por la puerta del dela casa vecina que estaba abierta y vió al acusado pasar por una apertura del cerco divisorio entre ambas casas y dirigirse a la cocina de la casa del occiso. Al poco rato oyó quejidos y la voz de un hombre que decía "me han apuñalado, me han apuñalado;" y muy pronto después vió al acusado bajar de la cocina y salir precipitadamente a la calle. La esposa del occiso, procesada en esta causa pero absuelta por carencia de pruebas sobre confabulación, en su afán de proteger y salvar al acusado, llegó al extremo de negar de que ella y el occiso tuvieron desaveniencias. Mas los actos del acusado después de la muerte del occiso demuestran sin ningún género de duda de que élla sostenía relaciones elícitas con aquél, en vida de su difunto marido y después de su entierro, pues el acusado la visitó, según propia declaración, un día después del entierro al que no asistió a pesar de ser su amigo y consocio. Y después de hacer desaparecer al obstáculo de sus relaciones ilícitas hicieron un viaje en avión a Manila, y apenas un año y cuarenta y cinco días de haberse quedado viuda y sin haber contraído ulterior matrimonio, dió a luz a una niña de paternidad ilegítima y desconocida. *Se declara:* Que las pruebas de la acusación señalan al acusado como el autor de la muerte del occiso.

2. ID.; PRUEBAS; COARTADA.—Las pruebas de coartada están refutadas por documentos oficiales que obran en los archivos del ejército.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Albay. Caluag, J.

Los hechos aparecen relatados en la decisión del Tribunal.

Rañola, Muñoz, Sierra & Torres por el acusado y apelante.

Procurador General Pompeyo Diaz y *Procurador General Auxiliar Lucas Lacson* por el demandante y apelado.

PADILLA, *M.:*

El hecho procesal es la muerte de Tomás Rodriguez que acaeció el 18 de enero de 1945, a eso de las 10 de la noche, mientras dormía en su casa sita en el municipio de Guinobatan, provincia de Albay. Impútase la alevósa muerte de Tomás Rodriguez a su esposa que con el occiso se hallaba en la habitación y a Carlos Pardo, razón por la cual se les querelló de parricidio. Enjuíciados debidamente el tribunal sentenciador absolvió a la acusada por carencia de pruebas sobre confabulación entre los acusados con las costas correspondientes de oficio, pero halló a Carlos Pardo reo de asesinato embebido en la querella y le condenó a sufrir reclusión perpetua, a indemnizar a los herederos del occiso en la suma de ₱6,000 y a pagar la mitad de las costas procesales. No conforme con la sentencia el reo recurre en alzada a este Tribunal.

Resulta que el procesado y occiso eran muy buenos amigos y socios en negocios y hasta en juegos prohibidos. Esta relación puso en continuo contacto al acusado y la esposa del occiso que engendró simpatía y muy pronto degeneró y culminó en adulterio. Enterado el marido de la infidelidad de su mujer la que no podía por mucho tiempo ocultarse ni sustraer a los ojos y conocimiento de una comunidad pueblerina, por verguenza y dignidad, se decidió a arreglar y pedir cuentas a su esposa. Esta en presencia de su madre y de su cuñada admitió su infidelidad y se conformó con la resolución de su marido de separarse—él a vivir fuera de la casa conyugal, ir a las montañas, ya que era el periodo más álgido y crítico de la guerra del Pacífico y él era guerrillero, y ahogar allá lejos, muy lejos de élla, las penas de su infortunio. Eso fué el 13 de enero de 1945. Pero la resolución del marido halló una valla casi infranqueable—la de los hijos. Por consejo de su suegra aúnque con corazón lacerado y ánimo deprimido volvió a la casa conyugal. Y así convivió con élla apesar de los pesares—todo por el afecto, amor y cariño a sus hijos—hasta que en la fatál y trágica noche del 18 de enero de 1945, a eso de a las 10, una mano criminal le privó de vida de una manera aleve porque se hallaba dormiendo cuando se le asestó o infirió una puñalada en la parte izquierda del pecho que produjo una herida en el sexto espacio intercostal de 6 a 7 pulgadas de profundidad y ¾ de una pulgada de incisión—mortal de necesidad por haber interesado, según opinión del facultativo que la examinó,

partes delicadas del cuerpo como el pulmón y el corazón. Una hemorrágia interna producida por la herida fué la causa inmediata de su muerte (Exhíbit A). En la noche de aquel día el guerrillero Tomás Rebutiaco obedeciendo orden del teniente Pigao, su superior inmediato, fué a la casa de Tomás Rodriguez para rogarle fuera a verse con el teniente en relación con el apresamiento de un espía de los japoneses. Rebutiaco halló a obscuras la casa de Rodriguez y las ventanas de la misma y la puerta del cerco alrededor cerradas. Pero la puerta del cerco de la casa vecina de Juan Orfanel estaba abierta y por ella Rebutiaco penetró y buscó paso o abertura en el cerco medianero o divisorio que al fin encontró cubierta de latón removible. Antes de entrar por la puerta del cerco del solar de Orfanel divisó a un individuo que venía hacia la misma dirección. Se retiró hacia un ángulo de los bajos de la casa de Orfanel y se puso a observar. Reconoció al individuo que era Carlos Pardo, y le vió pasar por la apertura del cerco divisorio y dirigirse a la cocina de la casa de Rodriguez. Rebutiaco en vez de seguir los pasos de Carlos Pardo salió del solar de Orfanel y se colocó frente a la puerta del cerco de la casa de Rodriguez que dá a la calle en espera de que se encendiera luz por la visita de Carlos Pardo que acababa de subir y asi poder llamar a Tomás Rodriguez y hablar con él para cumplir con su cometido. Pero al poco rato oyó quejidos y la voz de un hombre que decía "Nabuno aco, Nabuno aco"—que en romance significa "me han apuñalado, me han apuñalado." Carlos Pardo que había subido por la cocina de la casa de Rodriguez bajó y precipitadamente pasó por el mismo camino en dirección a la calle y muy pronto Rebutiaco perdióle de vista. Este dió cuenta de lo que había visto al teniente Pigao. David Marbella que estaba de vigilante en una casa vecina de Juan Garcia ocupada a la sazón por el Dr. Rivera, aúnque en aquellos días éste estaba ausente por haber evacuado a un barrio fuera de la población de Guinobatan, oyó los quejidos de Tomás Rodriguez y dirigiendose a la ventana vió por el orificio de una concha rota a Carlos Pardo andar de prisa procedente de las casas de Rodriguez y Orfanel. En la intersección de las calles General Luna, en donde se hallaba la casa de Rodriguez, y M. H. del Pilar, en donde estaba la casa de Carlos Pardo, Constancio Argarin viniendo del puesto militar en el barrio de Mauraro, Guinobatan, para volver a su casa en la población, encontró a Carlos Pardo que iba en dirección a su casa, y como era un prominente ciudadano por haber sido alcalde del pueblo, le saludó con las palabras "Buenas noches Alcalde." pero Carlos Pardo desvió su cara y no le contestó.

Las otras pruebas de la acusación son la declaración de Juan Rosalita, un herrero de 64 años de edad, quien declara que allá por Noviembre de 1944 Carlos Pardo le mandó le hiciera un bolo y un jifero al estilo de los que utilizan los matarifes de 7 y media pulgadas de longitud no incluyendo el mango y que Carlos Pardo los recogió de su herreria; la de Sabina Micaller, hermana ilegítima de Socorro Diaz, esposa de Carlos Pardo, quien declara que élla vivía en la casa de su cuñado Carlos Pardo; que a las 4 de la tarde del 18 de enero de 1945 vió a Carlos Pardo meterse y encerrarse en el baño y oyó que él estaba afilando algo; que después de cenar Carlos Pardo bajó de casa y volvió entre 10 y 11 de la noche, se metió en su habitación y echó a dormir; que al día siguiente vió a Carlos Pardo sentado en una butaca en la sala pensativo y con la cara ruborizada y encendida.

Tacha el acusado de parciales y por tanto indignos de crédito al testigo Tomás Rebutiaco, porque fué condenado por hurto a sufrir dos meses y un día de arresto mayor y porque José Gaya, en cuya casa se hospedó el teniente Pigao, superior inmediato de Rebutiaco, fué arrestado por los guerrilleros de Pasacao, Camarines Sur, por sospecha de ser pro-japonés y en aquélla ocasión el capitán Augusto F. Gutierrez tomó parte en la investigación de José Gaya; a David Marbella, porque Juan Garcia era uno de sus enemigos políticos en Guinobatan a cuyo servicio estaba David en calidad de doméstico y porque éste se enfadó de él cuando le pidió empleo y no le pudo dar; a Constancio Argarin, porque éste le pidió ropas que la UNRRA distribuía y se enfadó de él porque no le dió. Niega el acusado lo declarado por Juan Rosalita acerca del jifero y bolo aúnque a éste no atribuye motivo alguno por su declaración. Estas tachas de los testigos que se acaban de mencionar, aúnque fuesen ciertas, no serían suficientes, si se tiene en cuenta el conjunto de las pruebas, para que puedan ser tildados de parciales e indignos de crédito.

La defensa del acusado es coartada. Mediante su testimonio y el de sus testigos la defensa trató de establecer que el 15 de enero de 1945 el capitán Augusto F. Gutierrez llegó procedente de Sorsogon a Floresta dentro de la comprehensión del municipio de Jovellar, Albay, y en donde el alcalde León Monilla de Jovellar tenía establecido su campamento de guerrilleros encabezados por él, a quien al día siguiente el capitán Augusto F. Gutierrez rogó enviara un propio para avisar a su cuñado, el acusado Carlos Pardo, que él quería entrevistarse con él en el campamento, a cuyo ruego el alcalde Monilla accedió enviando a uno de sus subordinados para traer

a Carlos Pardo al compamento para la entrevista pedida, y como en efecto Carlos Pardo llegó al campamento el 17 de enero y se entrevistó en la mañana del siguiente día con su cuñado el capitán Augusto F. Gutierrez que llegó al campamento después de entrevistarse con el coronel Sandiko y evacuar lo que su superior el coronel Licerio Lapuz le había encargado. Al día siguiente el capitán Gutierrez se marchó dejando a su cuñado, el acusado Carlos Pardo, en el campamento, y éste a su vez volvió a su pueblo el día después de la partida de su cuñado.

Mas estas pruebas de coartada se hallan plenamente refutadas por documentos oficiales que obran en los archivos del ejército escritos y firmados por el capitán Augusto F. Gutierrez y el teniente coronel Licerio Lapuz, en donde consta que ambos oficiales del ejército estaban en Tacloban, provincia de Leyte, desde el 26 de diciembre de 1944 hasta el 11 de febrero de 1945, no habiendose ausentado del lugar ninguno de los dos durante dicho período de tiempo (Exhíbits L, M, N, O y P). De hecho el teniente Tomás Karingal llegó a Leyte el 15 de enero de 1945 y al día siguiente se presentó a sus superiores en Palo, Leyte, y allí se vió con el teniente coronel Licerio Lapuz y el capitán Augusto F. Gutierrez.

Se insinua por algunos testigos del acusado de que el que asesinó al occiso pudo haber sido un tal Wheeler Octavo a quien Tomás Rodriguez había denunciado al jefe de su organización de guerrilleros haberle visto montando un carabao hurtado, o guerrilleros que no aprobaban lo que Tomás Rodriguez había hecho, a saber: el de unirse con otra organización de guerrilleros—la de Katipunan—siendo ya miembro de la de Sandiko. María Velasco, la viuda del occiso, trató de infundir duda en el ánimo del tribunal sentenciador al declarar que Tobías de los Reyes, oficial de los guerrilleros, tomó su declaración el día siguiente al del suceso, aunque élla dijo que fué el 18, y en dicha declaración escrita con su puño y letra y firmada por élla hizo constar que élla se despertó porque alguien que creía era su esposo le estiraba el pelo; que élla llamó a su marido y éste contestó; que el individuo que la tiraba del pelo puso un pañolito en su boca, estiróla al suelo, la amenazó de muerte si gritaba, y le pidió su dinero; que élla indicó su aparador pero el individuo la arrastró hacia el aparador de donde élla sacó dinero y le entregó; que la llevó fuera de la habitación a la sala y es cuando ella oyó golpes en la habitación de donde élla vino; que trató de pedir socorro pero el individuo que la tenía sujetada la arrastró hacía la otra habitación; que alguien suspiró y fué entonces cuando el individuo la dejó libre (Exhibit 12). En su declaración en juicio élla no mencionó el robo de que, según élla, había sido victima, tal como lo había manifestado en su

declaración escrita al guerrillero oficial Tobías de los Reyes. Aun más, cuando a los gritos de socorro que dieran élla y Sofia Orogo, la criada de la casa, José Rodriguez, hermano del occiso, y Escolastico Orpiada, ambos vecinos, acudieron a la casa, María Velasco pretendió no saber nada de lo que había ocurrido a su marido y se limitó a pronunciar su nombre "Tomás" y después a la pregunta insistente de su cuñado José Rodriguez élla dijo que Tomás fué apuñalado. Preguntada por quien María no contestó. Nada de robo ni de ladrones hizo élla entonces mención.

Pero la insinuación de que el asesino pudo haber sido Wheeler Octavo o guerrilleros disgustados del occiso o uno de los tres individuos que penetraron en la casa del occiso en la noche de autos no puede enervar las pruebas claras y convincentes de la acusación.

María Velasco en su afán de proteger y salvar a Carlos Pardo llegó al extremo de negar de que élla y el occiso tuvieron desaveniencias, pero los actos de Carlos Pardo después de la muerte de Tomás Rodriguez demuestran sin ningún género de duda de que élla sostenía relaciones ilícitas con el acusado en vida de su difunto marido y después de su entierro, pues el acusado visitó a élla el 20 de enero, según propia declaración, un día después del entierro al que él no asistió a pesar de ser su amigo y consocio. Y después de hacer desaparecer al obstáculo de sus relaciones ilícitas hicieron un viaje en avión a Manila, y el 4 de marzo de 1946, apenas un año y 45 días de haberse quedado viuda y sin haber contraido ulterior matrimonio, dió a luz a una niña de paternidad ilegítima y desconocida (Exhibit I).

Todo ello nos lleva al convencimiento de que el autor de la muerte alevósa de Tomás Rodriguez era Carlos Pardo.

La circunstancia agravante de morada concurrió en la perpetración del delito, pero por no contar con el número suficiente de votos para imponerle la pena capitál, confirmamos la sentencia objeto de alzada con las costas a cargo del recurrente.

Parás, Pres., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador y *Concepción, MM.*, están conformes.

Se confirma la sentencia.

[No. L-4510. May 31, 1954]

MARC DONNELLY & ASSOCIATES, INC., petitioner, *vs.* MANUEL AGREGADO, Auditor General; CORNELIO BALMACEDA, Secretary of Commerce and Industry; and RAMON L. PAGUIA, Chief of the Sugar Quota Office, respondents.

1. CONSTITUTIONAL LAW; DELEGATION OF LEGISLATIVE POWERS; POWERS MAY BE DELEGATED IF AUTHORIZED BY THE CONSTITUTION; ACT OF CABINET IS ACT OF PRESIDENT.—On July 10, 1946, the President, acting upon the authority vested in him by Commonwealth Act No. 728, making it unlawful to export agricultural or industrial products without a permit from the President, prohibited the exportation of certain materials but allowed the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration. The Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charged on metal exports and authorized their collection. Petitioner exported large amounts of scrap metals for which it paid by way of royalty fees the total amount of ₱54,862.84. Petitioner now seeks the refund of said royalty fees, contending that the aforesaid resolution constitutes an undue delegation of legislative powers because, in substance, it creates and imposes an *ad valorem* tax. *Held:* The resolution approved by the Cabinet is perfectly legal because it was done by authority of Commonwealth Act No. 728 and in pursuance of an express provision of the Constitution that Congress may by law authorize the President, subject to certain limitations, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues. The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not invalidate said resolution because it cannot be disputed that the Act of the Cabinet is deemed to be, and essentially is, the act of the President.

2. ID.; ID.; RULE FORBIDDING DELEGATION OF LEGISLATIVE POWERS, NOT ABSOLUTE; EXCEPTIONS.—The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation.

3. ID.; PROPERTY RIGHTS; EXPORTATION OF SCRAP METALS, NOT A RIGHT BUT A PRIVILEGE; AUTHORITY OF PRESIDENT TO REGULATE EXPORTATION INCLUDES AUTHORITY TO IMPOSE CONDITIONS AND LIMITATIONS FOR THE EXERCISE OF PRIVILEGE.—Commonwealth Act No. 728 expressly authorizes the President not merely to regulate but to prohibit altogether the exportation of scrap metals. Hence, there is no absolute right on the part of any person or entity to export such materials. If, however, the President chooses to grant the privilege, he can impose conditions and limitations he may deem proper, one of them being the payment of royalties for permissive or lawful use of property right.

4. ROYALTY RATES, MAY TAKE THE FORM OF TARIFF RATES; IMPOSITION THEREOF CAN BE DELEGATED TO THE PRESIDENT.—Royalty rates may take the form of tariff rates, the imposition of which can be delegated to the President by Congress in pursuance of an express provision of the Constitution.

5. ID.; ROYALTIES NOT IMPOSITION; PAYMENT OF ROYALTY IS THE CONSIDERATION FOR THE EXERCISE OF THE PRIVILEGE; EXPORTER WHO PAYS, GUILTY OF ESTOPPEL.—The payment of royalty rates cannot be considered as an imposition or one exacted under duress, for the exporter who wants to avail of this privilege is free to act on the matter as his interest might dictate. The payment of royalty can be considered as the

consideration for the exercise of the privilege and one who avails of that privilege and pays the consideration is guilty of estoppel.

ORIGINAL ACTION in the Supreme Court. Review of the decision of the Auditor General.

The facts are stated in the opinion of the court.

Arturo Agustines for the petitioner.

Solicitor General Pompeyo Diaz, Assistant Solicitor General Francisco Carreon, and *Solicitor Augusto M. Luciano* for the respondents.

BAUTISTA ANGELO, *J.:*

This is a petition for review of a decision of the Auditor General denying the claim of petitioner for the refund of the export fees paid by it to the Sugar Quota Office in the amount of ₱54,862.84.

On July 2, 1946, Congress enacted Commonwealth Act No. 728, making it unlawful for any person, association or corporation to export agricultural or industrial products, merchandise, articles, materials, and supplies without a permit from the President of the Philippines. This Act confers upon the President authority to "regulate, curtail, control, and *prohibit* the exportation of materials abroad and *to issue such rules and regulations as may be necessary* to carry out the provisions of this Act, through such department or office as he may designate."

On July 10, 1946, the President acting upon the authority vested in him by Commonwealth Act No. 728, promulgated Executive Order No. 3, prohibiting the exportation of certain materials therein enumerated but allowing the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration.

On April 24, 1947, the chief of the Executive Office, by authority of the President, sent a communication to the Philippine Sugar Administration authorizing the exportation of scrap metals upon payment by the applicants of a fee of ₱10.00 per ton of the metals to be exported. Subsequently, the Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charged on metal exports.

Petitioner herein exported large amounts of scrap iron, brass, copper, and aluminum during the period from December, 1947 to September 1948, for which it paid by way of royalty fees the total amount of ₱54,862.84. This amount was collected by the Sugar Quota Office under the authority granted by the Chief of the Executive Office and the resolution of the Cabinet above mentioned. The case is now before us by way of appeal from the

decision of the Auditor General who denied the request for refund of said royalty fees.

Petitioner contends that the resolution of the Cabinet of October 24, 1947, fixing the schedule of royalty rates on metal exports and providing for their collection constitutes an undue delegation of legislative powers because, in substance, it creates and imposes an *ad valorem* tax.

Article VI, section 22(2), of the Constitution provides:

"The Congress may by law authorize the President, subject to such limitations and restrictions, as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues."

It is clear from the above that Congress may by law authorize the President, subject to certain limitations, to fix, within specified limits, *tariff rates*, import or export quotas, and tonnage and wharfage dues. And pursuant to this constitutional provision, Congress approved Commonwealth Act No. 728 conferring upon the President authority to regulate, curtail, control, and prohibit the exports of scrap metals and to issue such rules and regulations as may be necessary to carry out its provisions. And implementing this broad authority, the Cabinet approved the resolution now in question authorizing the levy and collection of certain royalty fees as a condition for the exportation of scrap metals and other merchandise.

In our opinion, this resolution is perfectly legal because it was done by authority of Commonwealth Act No. 728 and in pursuance of an express provision of our Constitution. The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not, in our opinion, invalidate said resolution because it cannot be disputed that the act of the Cabinet is deemed to be, and essentially is, the act of the President. And this is so because, as this Court has aptly said, the secretaries of departments are mere assistants of the Chief Executive and "the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, *and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.*" (Villena *vs.* The Secretary of Interior, 67 Phil., 451.) To hold otherwise would be to entertain technicality over substance. And with regard to the acts of the Cabinet, this conclusion acquires added force because, unless shown otherwise, the Cabinet is deemed to be presided over always by the President himself.

It is contended that the royalty rates prescribed in the Cabinet resolution are not fees but in effect partake of the nature of an *ad valorem* tax the imposition of which cannot be delegated to the President by Congress. The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation (Constitution of the Philippines by Tañada and Fernando, p. 449). In the present case, our Constitution expressly authorizes such delegation. (Article VI, section 22(2.) This is so because the royalty rates may take the form of tariff rates. At any rate, Commonwealth Act No. 728 confers upon the President authority to regulate, curtail, control, and prohibit the exportation of scrap metals, and in this authority is deemed included the power to exact royalties for permissive or lawful use of property right. (Raytheon Mfg. Co. *vs.* Radio Corporation of America, 190, N. E. 1, 5, 286 Mass. 84, cited in Words and Phrases, Vol. 37, p. 810.)

One point that should be considered is the distinction between the business of exporting scrap metals, on one hand, and other merchandise on the other. As a rule, common trades or industries, or the exportation of merchandise in general, cannot be prohibited, but may only be regulated in the exercise of the police power of the State; not so with regard to scrap metals whose exportation may be completely banned. This is the core of Commonwealth Act No. 728. It authorizes the President not merely to regulate but to prohibit altogether the exportation of certain articles, among them scrap metals. Hence, there is no absolute right on the part of any person or entity to export such materials. But the President, acting under the authority granted by said Act, did not, in promulgating Executive Order No. 3, choose to place a complete ban on the exportation of scrap metals, but permitted such exportation upon payment of certain royalty. If the President can prohibit altogether such exportation, *a fortiori* he can, as he did, impose conditions and limitations he may deem proper in granting the privilege, one of them being the payment of royalties similar to the once subject of the present litigation.

The payment of these royalties cannot be considered as contended by petitioner, as an imposition or one exacted under duress, for the exporter who wants to avail of this privilege is free to act on the matter as his interest might dictate. Compliance with the resolution was optional. It was left entirely to his discretion. If with full knowledge of the condition imposed by the resolution the exporter of the prohibited article deems it convenient to traffic on it because of the profit he expects to derive

from the transaction, he cannot later be heard to complain of what the Government has exacted because of the presumption that, in spite of that charge, the transaction would still bring him a substantial profit. The payment of the royalty can be considered as the consideration for the exercise of the privilege and one who avails of that privilege and pays the consideration is guilty of estoppel. This is the predicament of petitioner.

Wherefore, petition is dismissed, without pronouncement as to costs.

Labrador, J., concurs.

Parás, C. J., Montemayor, and *Jugo, JJ.*, concur in the result.

PABLO, *M.*, concurrente:

La recurrente pide la devolución de la cantidad de ₱54,968.41 que había pagado a la Sugar Quota Office por el permiso que obtuvo para exportar desperdicios de metal, "scrap metals." Cuando la recurrente pidió permiso estaba enterada de que la Ley del Commonwealth No. 728 declaraba ilegal, sin permiso del Presidente de Filipinas, la exportación de productos, mercancías, artículos, materiales y efectos agrícolas o industriales. En su artículo 2, dicha ley autoriza al Presidente a regular, restringir, controlar y prohibir dicha exportación mencionada y dictar los reglamentos necesarios para llevar a efecto las disposiciones de dicha ley. En 10 de julio de 1946, ejerciendo los poderes que le confería dicha ley, el Presidente promulgó la orden ejecutiva No. 3 que prohibía la exportación de los materiales enumerados en el artículos 1.° pero permitía la exportación de otras mercancías como los desperdicios de metal con la condición de que se obtuviera antes licencia de la Philippine Sugar Administration.

En 24 de octubre de 1947 el Gabinete, por recomendación del Administrador de la National Development Company, aprobó una resolución estableciendo un "schedule of royalty rates on metal exports."

La recurrente contiende que la cantidad que pagó de acuerdo con dicha tarifa (schedule) y que hoy reclama fué un impuesto sobre las cantidades de desperdicios de hierro, latón, bronce y aluminio que había exportado desde diciembre de 1947 hasta septiembre de 1948.

En 2 de diciembre de 1947 la recurrente, acogiéndose a las disposiciones de la ley del Commonwealth No. 327, presentó su reclamación al Auditor General, alegando que el impuesto era anticonstitucional, porque el Gabinete no tenía autoridad para adoptar dicho impuesto y que solamente el Congreso es el que está autorizado para aprobar ley sobre impuestos. En su decisión de 8 de noviembre

de 1950 el Auditor denegó el reembolso, y contra ella la recurrente apeló en 25 de enero de 1951.

Los artículos 1 y 2 de la Ley del Commonwealth No. 327, en que se funda su reclamación, dicen así:

"SECTION 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him. With respect to the accounts of accountable officers, the Auditor General shall act on the same within one hundred days after their submission, Sundays and holidays excepted.

"In case of accounts or claims already submitted to but still pending decision by the Auditor General on or before the approval of this Act, the periods provided in this section shall commence from the date of such approval.

"SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing:

"(*a*) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or

"(*b*) To the President of the Philippines, or

"(*c*) To the Supreme Court of the Philippines if the appellant is a private person or entity.

"If there are more than one appellant, all appeals shall be taken to the same authority resorted to by the first appellant.

"From a decision adversely affecting the interests of the Government, the appeal may be taken by the proper head of the department or in case of local governments by the head of the office or branch of the Government immediately concerned.

"The appeal shall specifically set forth the particular action of the Auditor General to which exception is taken with the reasons and authorities relied on for reversing such decision."

Toda reclamación, al parecer, está incluida en la palabra "claims" porque su significado es amplio; pero no está incluída la reclamación que pide el reembolso de una contribución indebidamente cobrada, porque el Código Administrativo de 1916, el Código Administrativo Revisado de 1917, la Ley No. 3685 y el Código Nacional de Rentas Internas disponen específicamente ante qué autoridad deben presentarse reclamaciones de reembolso de impuestos ilegalmente cobrados.

Si el Auditor General tiene facultad o jurisdicción para resolver asuntos como el presente, entonces una reclamación presentada antes de la proclamación de la independencia sería apelable al Presidente de los Estados Unidos. No creemos que la Legislatura haya intentado, ni en sueños, que el Presidente de Estados Unidos y el de Filipinas se entretuviesen en asuntos de tal naturaleza. Si se tratase, por ejemplo, de recobrar un impuesto ilegalmente cobrado por poseer licencia de armas de fuego, ¿apelaría el inte-

resado al Presidente de Estados Unidos si no estuviese satisfecho de la decisión del Auditor? La palabra "claims" de que habla el artículo 1.º de la Ley del Commonwealth No. 327 que se aprobó en 18 de junio de 1938 no debe referirse a reclamaciones de reintegro de impuestos indebidamente cobrados, porque la resolución de las mismas ya estaba encomendada expresamente al Administrador de Rentas Internas y a los tribunales de justicia por el Código Administrativo Revisado de 1917, tal como fué enmendado por la Ley No. 3685.

El artículo 1721 del Código Administrativo de 1916, el artículo 1579 de Código Administrativo Revisado de 1917 y el artículo 1579 del último código, tal como fué enmendado por la Ley No. 3685, dicen textualmente: "When the *validity of any tax is questioned,* or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within thirty days, (10 días en el Cód. Adm. de 1916 y Cód. Adm. de 1917) and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax to bring an action against the Collector of Internal Revenue for the recovery * * *." (Art. 1579 Cód. Adm. Rev., tal como fué enmendado por la Ley No. 3685.)

En las palabras "any tax" empleadas en los tres códigos están incluídas todas las reclamaciones sobre *cualquier* impuesto indebidamente cobrado: no se refieren a impuestos de rentas internas solamente.

La disposición especifica del Código Administrativo Revisado, tal como fué enmendado, debe prevalecer sobre la disposición de carácter general de la ley del Commonwealth No. 327: así lo exige la hermanéutica legal.

El asunto citado por la mayoría de la Manila Electric Company *contra* el Auditor General y Comisión de Servicios Públicos, 73 Phil., 128, no puede servir de precedente; no se percataron el Auditor y este Tribunal del artículo 1579 del Código Administrativo Revisado, tal como fué enmendado, de que el asunto era de la incumbencia del Administrador de Rentas Internas y del Juzgado de Primera Instancia.

El artículo 584 del Código Administrativo Revisado dice así: "The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books,

records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. * * *" Esta disposición no incluye la reclamación de impuestos indebidamente cobrados. Darle al Auditor facultad para resolver semejante reclamación es concederle función judicial.

El Código Nacional de Rentas Internas (en sustitución del Código Administrativo Revisado y otras leyes enmendatorias) en vigor cuando la recurrente presentó su reclamación dispone lo siguiente:

"SEC. 306. *Recovery of tax erroneously or illegally collected.*— No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

La cantidad que reclama la recurrente está incluída en las siguientes palabras: "of any sum alleged to have been excessive or in any manner wrongfully collected", que equivalen a *any tax* empleadas por los códigos anteriores.

No es de la incumbencia del Auditor General decidir la reclamación sobre la devolución de impuestos ilegalmente cobrados o declarar que una ley, orden o resolución que dispone el cobro de un impuesto, sea o no anticonstitutional. Son dos cuestiones que deben resolver los tribunales de justicia, porque son asuntos esencialmente judiciales y no administrativos. La recurrente, por tanto, debió de haber planteado la devolución del impuesto anticonstitutionalmente cobrado ante el Administrador de Rentas Internas primero o la Philippine Sugar Administration, y si se denegara o no se resolviera su reclamación, presentar demanda ante el Juzgado de Primera Instancia dentro de dos años después de pagados los impuestos. (Art. 306, Cód. Nac. de Rentas Internas.)

Podría arguir la recurrente que el impuesto hoy discutido no es de rentas internas sino de exportación y, por lo tanto, no debiera plantearse ante el Administrador de Rentas Internas ni en el Juzgado de Primera Instancia. Tal contención sería insostenible, porque en Visayan Electric, S. A. *contra* Saturnino David, etc., G. R. No. L–5157, abril 27, 1953; Philippine Railway Co. *vs.* Collector of Internal Revenue, G. R. No. L–3859, marzo 25, 1952;

y Manila Railroad Co. *contra* Rafferty, 40 Jur. Fil., 237, se trataba de un indebido aumento de impuesto sobre franquicia, y la cuestión se planteó ante el Administrador de Rentas Internas y luego ante el Juzgado de Primera Instancia.

El Auditor General no tiene jurisdicción para resolver la reclamación fundada en la anticonstitucionalidad del impuesto cobrado; tampoco este Tribunal adquiere jurisdicción apelada.

Por estas razones, concurro con el sobreseimiento de la causa.

CONCEPCION, *J.*, concurring:

Creo, con el magistrado Pablo, que el Auditor General carece de autoridad para determinar la validez de los derechos o "royalties" envueltos en la presenta causa.

BENGZON, *J.*, dissenting:

With due deference to the majority opinion, my vote is for the petitioner.

On several occasions, between December 1947 and September 1948, the domestic corporation Marc Donnelly and Associates Inc. exported considerable quantities of scrap iron, brass, copper and aluminum, for which it paid under protest to the Sugar Quota Office as "royalties" the total amount of ₱54,862.84. Such royalties were admittedly demanded "under the authority granted to it (Sugar Quota Office) by the resolution of the Cabinet of October 24, 1947", which reads as follows:

"Upon recommendation of the General Manager of the National Development Company, the Cabinet approved the following schedule of royalty rates on metal exports:

Scrap copper	₱50.00 per metric ton
Scrap brass	50.00 per metric ton
Scrap aluminum	20.00 per metric ton
Scrap lead	40.00 per metric ton
Scrap cast iron	5.00 per metric ton
Scrap steel	2.00 per metric ton
Burnt scrap wire other than burnt copper wire	5.00 per metric ton

Contending that the Cabinet's resolution was invalid, and that the payments were involuntary, Marc Donnelly and Associates Inc. submitted to the Auditor-General, in September 1950, a formal claim for refund, which was denied with the explanation:

"The collection of the royalties in question is based on the resolution of the Cabinet, dated October 24, 1947, which is assailed by you as unconstitutional. Inasmuch as this Office has no power to pass upon the constitutionality or validity of said resolution and the fact that the resolution is presumed to be unconstitutional unless declared by a competent court to be otherwise, the request for refund of royalties collected by virtue of said resolution is hereby denied."

Reversal of the Auditor's decision is now requested under the provisions of Commonwealth Act No. 327 and Rule 45 of the Rules of Court. In Manila Electric *vs.* Auditor General (73 Phil., 128), we entertained a similar petition.

It is urged that the execution are illegal, the Cabinet having no lawful power to require the collection of "royalty" fee on metal exports.

As the Auditor General disapproved the refund solely upon the ground that the Cabinet's resolution "should be presumed to be constitutional unless declared by a competent court to be otherwise", the question is the Cabinet's authority to direct the collection of the aforesaid royalties.

No statute has been quoted authorizing the Cabinet to levy the assessment. Observe that "the taxing power of the State is exclusively a legislative function, and taxes can be imposed only in pursuance of legislative authority" (61 C. J., p. 81).

However, seeking to justify the collection, the respondents have formulated these propositions:

1. Commonwealth Act No. 728 (July 1946) made it unlawful to export agricultural or industrial products, materials or supplies, without a permit from the President. It authorized the President to regulate, control or prohibit exportation of materials and to issue rules and regulations in connection therewith.

2. In the exercise of such authority, the President promulgated Executive Order No. 3 prohibiting the exportation of scrap metal unless an export license was first obtained from the Philippine Sugar Administration. Subsequently the Cabinet at its 132nd meeting of October 24, 1947 approved the resolution in question.

3. And the President authorized the collection by the indorsement of the Chief of the Executive Office dated April 24, 1947 which reads as follows:

> "Respectfully referred to the Philippine Sugar Administration, Manila, hereby authorizing the exportation of scrap brass and scrap metals representing only the balance of the export permits issued before November 1, 1946, upon payment by the applicants concerned of a fee of ₱10.00 per ton of scrap brass and scrap metals to be exported."

4. The President was validly authorized by Congress (delegation of legislative power) (Art. VI, Sec. 22 [2] Constitution) to regulate, control and prohibit the exportation of metals.

5. "When the Cabinet, which is considered the highest advisory body to the President approved the resolution in question and the President himself authorized the Sugar Quota Office to levy and collect royalties as fixed in said resolution, this was done by authority of Commonwealth Act No. 728."

6. The authority to regulate included the authority to exact royalties or export dues.

To repeat, the respondents' defense is founded on the above propositions which for convenience have been numbered in six separate paragraphs to facilitate examination or analysis.

The first two paragraphs are undeniable. The third is incorrect insofar as it asserts that these royalties were demanded pursuant to the indorsement of April 24, 1947. The Auditor-General expressly found they were demanded by virtue of the resolution of the Cabinet—not by the indorsement—and this involves a question of fact, the indorsement referring specifically to exports "representing only the balance etc." which did not evidently cover herein petitioner's consignments abroad.

The fourth proposition is correct.

Inasmuch as the indorsement of the Executive office is inapplicable, the fifth proposition poses the crucial question whether the Cabinet approved the resolution by authority of Commonwealth Act No. 728. The authority to regulate—and to require payment of fees on—exports was entrusted to the President. That power was not expressly delegated by the President to the Cabinet. (It is doubtful whether he could validly do so.) And the Cabinet is not the President. True, the President presides Cabinet meetings, but his voice is only one, convincing though it may be. Furthermore, the Cabinet may meet without the presence of the President. The conclusions of the Cabinet and its resolutions are not necessarily the President's. We may not, therefore, hold that, in the eyes of the law, the Cabinet's resolution of October 24, 1947 was the act of the President. It was the act of the Cabinet, that had *no statutory authority* to require payment of royalties or export fees. Our ruling in the Villena case[3] followed by the majority, applies only to *executive* powers of the President—not to legislative powers delegated to him. *Delegata potestas delegari non potest.*

Not even Congress could constitutionally delegate to the Cabinet its power to tax.

As a suppletory proposition, the respondents' claim the entire transaction "might be regarded as a contract between the government, the latter conceded to the exporters the privilege of exporting certain goods the export of which could otherwise have been prohibited. The government, therefore, collected the royalty, not by virtue of its taxing power, but in the exercise of a contractual right."

But the comparison is unacceptable, because the exporter was not *on equal footing* with the government; it was virtually under duress. The officers said, "pay, otherwise your metals will not be exported." And the exporter had to disgorge, under protest; otherwise his goods would rust and rot. And then, accepting the comparison for the sake of argument, I think "the Government"* means the

[3] Villena *vs.* Secretary of the Interior, 67 Phil., 451.

* The question is not whether the *Government* may tax metal exports.

appropriate governmental agency, which in this instance should be the Legislature or the President (at most). Surely not the Cabinet.

Supposing however that the resolution of the Cabinet might be regarded as a Presidential directive, the question remains whether the President himself had power to exact the "royalty". In my opinion he had not. Under Commonwealth Act 728 he could, at most, require a license fee; but a "royalty" is not a fee. It connotes some kind of ownership [4], far different from that power of regulation justifying the exaction of license fees. Yet even supposing the royalty had been labeled "export fees", it would undoubtedly be also unauthorized, because, virtually, it was a *tax,* for it tended to produce revenue—*ad valorem* charges. It was not collected merely as compensation for services rendered, in the interest of necessary regulations. This difference between fees and taxes is well-known in this jurisdiction [5], the one implying the exercise of police power, and the other the taxing power. And authority to collect fees, does not ordinarily embrace the power to impose taxes [6].

In this regard it is noteworthy that, doubting the validity of these exactions, the House approved in 1950 a bill (H. Bill No. 511) validating the Cabinet action re royalties on metal exports. Such bill, however, failed to pass the Senate, because there were objections to its retroactive operation.

It is said that, because the President had the power to regulate and prohibit exportation of metals, he could permit exportation thereof upon payment of taxes. This is tantamount to saying, as the Secretary of Education has the power to regulate the establishment and operation of schools, he may, instead of regulating, just require the schools to pay taxes—without supervision, inspection, etc.

[4] Apparently such was the Cabinet's view. It approved the resolution induced by a memorandum of the General Manager, National Development Co. saying: "However, it is an indisputable fact that the scrap iron, scrap metals, scrap brass, etc. that were lying in any public places and waters, especially sunken ships and barges, belong to our government and we would, therefore, recommend that the parties who were issued licenses be required to pay our government a royalty of a minimum of $5 or $10 per ton of scrap iron, scrap metals, scrap brass, etc. that may be exported." But this "ownership" was not pressed here. Obviously, collection in this case was a mistaken application of the Cabinet's resolution, as the metals exported were not shown to be "lying in public places and waters especially sunken ships and barges".

[5] Manila Electric Co. *vs.* Auditor General, 73 Phil., 128; Cu Unjieng *vs.* Palstone, 42 Phil., 818; Phil. Transit *vs.* Treasurer, L–1274 May 27, 1949.

[6] Cf. Cooley on Taxation (1924) Vol. 4, pp. 3531–3534; Kiowa County *vs.* Dunn., 21 Colo., 185, 40 Pac., 357; Jackson *vs.* Newman, 59 Miss., 385; Western U. Tel. Co. *vs.* City Council, 56 Fed., 419.

And because the City of Baguio has authority to control or prohibit the establishment of gambling houses, and houses of ill fame (sec. 2553 (*u*) Revised Administrative Code), it may permit their operation upon payment of taxes. Extreme examples indeed: but they illustrate the idea that the police power to *prohibit,* or regulate, does not include the power to *permit* upon payment of taxes.

The power of regulation and prohibition in the case of schools or gambling houses is founded upon the same principles as the power to prohibit exportation of metals: *pro bono publico.* Police power. Such regulation of prohibition cannot be bartered away in exchange for thousands of pesos.

It is also said that the matter was not within the jurisdiction of the Auditor General's Office. It was a "claim . . . due from . . . the government of the Philippine Islands" within the meaning of article 584 of the Revised Administrative Code. It was also a claim within the scope of Commonwealth Act No. 327. The fact that appeal to the President of the U. S. is no longer feasible, does not have, in my opinion, the effect of annulling the whole law Commonwealth Act No. 327).

Granted that the Auditor General had no authority to annul the Cabinet's resolution, still it does not follow that the Auditor had no power to take cognizance of the monetary claim against the Government. Before him were two questions: Was the tax collected in accordance with the Cabinet's resolution? Was this resolution valid or constitutional? He answered the first in the affirmative. As to the second he said he must hold it valid because he had no power to annul it. He thought prudently; but he acted on the claim. And we now *have appellate* jurisdiction. Had he decided both questions in the negative, appeal could still be made to this court.

Let us remember that this being a government of laws, its officers may only exercise those powers expressly or impliedly granted by the Constitution or the statutes. Acts performed by them without authority are void, confer no rights, afford no protection. Royalties or taxes demanded without lawful authority and paid under protest. should be returned [7] no matter the consequent loss of revenue. The citizens will thus be imbued with the fullest respect, the utmost loyalty to constituted authority and republican government.

REYES, *J.*

I concur in this dissent.

Petition dismissed.

[7] Zaragoza *vs.* Alfonso, 46 Phil., 159.

DECISIONS OF THE COURT OF APPEALS

[No. 10374–R. February 11, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* DATU BAKIAL BUYUK, accused and appellant

CRIMINAL LAW; HOMICIDE; SELF-DEFENSE; REASONABLE NECESSITY IN THE MEANS EMPLOYED TO REPEL AGGRESSION.—In considering whether or not there was reasonable necessity in the means employed to repel the aggression the law does not require a strict and material commensurability of the means of attack and defense. The proportionateness thereof does not depend upon the harm done but upon the imminent danger to which the person attacked is exposed; the emergency and the instinct of self-preservation that moves or impels the defense. This should be so because the person threatened with a grave injury or the loss of his life is not expected to be able to rationalize with sufficient tranquility of mind the reasonable means that he should employ in his defense.

APPEAL from a judgment of the Court of First Instance of Sulu. Villalobos, *J.*

The facts are stated in the opinion of the court.

Francisco S. Salvador for accused and appellant.

Assistant Solicitor General Francisco Carreon and *Solicitor Ramon L. Avanceña* for plaintiff and appellee.

OCAMPO, *J.:*

Appeal from a decision by the Court of First Instance of Sulu finding the appellant, Datu Bakial Buyuk, guilty of the crime of homicide and sentencing him to an indeterminate penalty of not less than 6 months of *arresto mayor,* nor more than 3 years of *prisión correcional,* to indemnify the heirs of the deceased Judani Uskil in the sum of ₱2,000 with subsidiary imprisonment in case of insolvency, to the accessory penalties prescribed by law, and to pay one-fourth of the costs.

The information charged the appellant, together with his father, Datu Buyok Pia and two others, with the murder of Judani Uskil on the morning of September 3, 1951, At the trial the prosecution and the defense presented two completely contradictory versions of the incident. The prosecution's theory was that the appellant and his co-accused conspired together to kill, as they in fact did kill, Judani Uskil. On the other hand the theory of the defense is that Judani Uskil was shot to death by appellant in self-defense and in defense of his father, Datu Buyok Pia.

The trial court rejected the prosecution's theory as unbelievable and accepted that of the defense but with a slight modification in that there was only incomplete self-

defense. The trial court believed that there was no reasonable necessity for the appellant to fire a third shot at Judani Uskil.

The facts as found by the trial court are not disputed on appeal. The only question in this appeal is whether under these facts the appellant is entitled to the justifying circumstance of complete self-defense.

These are the pertinent facts as found by the trial court:

At about seven o'clock in the morning of September 3, 1951, Judani Uskil went to the house of Datu Buyuk Pia. While he was coming up the stairs of the house Mora Pindong Awala, a neighbor of Datu Buyuk Pia who happened to be in the house at the time, saw him. She noticed that Judani Uskil was biting his lower lip and his face was red with anger. She also observed that he was holding an unsheathed *Kris* in his hand. Sensing his intention, Mora Pindong Awala shouted a warning to Datu Buyuk Pia who then peeped out of the door. Upon seeing Judani Uskil already near the door Datu Buyuk Pia warned him not to enter the house if his intention was to attack and kill. But Judani refused to heed the warning and instead answered, "Now is your day". Then he started to attack Datu Buyuk Pia with his *Kris*. Datu Buyuk Pia evaded the slashes of Judani Uskil and retreated towards the interior of the house. There he secured a piece of wood with which he parried the blows of Judani. While Judani was pressing his attack upon Datu Buyuk Pia, the latter's son, the herein appellant arrived on the scene with a shotgun. Pointing it at Judani, appellant ordered Judani to lay down his *Kris*. However, instead of obeying the order Judani turned to attack appellant, who was then only about two *brazas* (fathoms) away. So appellant fired at him, hitting him on the left chest. This did not stop Judani who continued to advance towards appellant. So, when Judani was only about a *braza* (fathom) away appellant shot him for the second time. This time Judani fell down face upwards. But Judani tried to stand up again so appellant fired at him for the third time. And this time Judani fell down dead.

In the opinion of the trial court this third shot was unnecessary and unjustified. And for this it concluded that appellant did not act in complete self-defense. Hence the court *a quo* declared him guilty of homicide and sentenced him accordingly.

We cannot agree with this conclusion of the court below. In considering whether or not there was reasonable necessity in the means employed to repel the agression the law does not require a strict and material commensurability of the means of attack and defense. The proportionateness thereof does not depend upon the harm done but upon the imminent danger to which the person attacked is exposed;

the emergency and the instinct of self-preservation that moves or impels the defense. This should be so because the person threatened with a grave injury or the loss of his life is not expected to be able to rationalize with sufficient tranquility of mind the reasonable means that he should employ in his defense. Thus we have held in People *vs.* Canson, CA–G. R. No. 3357–R (October 25, 1949):

"As to the reasonable necessity of the means employed to repel the aggression, it has been held that this does not imply a material commensurability between the means of attack and the defense. What the law requires is equivalence, in the consideration of which will enter as principal factors, the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense (People *vs.* Lara, 48 Phil., 153), and, according to jurisprudence of courts, the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury. (Decision of the Supreme Court of Spain, December 22, 1887; U. S. *vs.* Paras, 9 Phil., 362)."

The appellant's assailant, the deceased Judani Uskil, was obviously strong and determined for he was not stopped by appellant's first shot despite the fact that he was only two *brazas* (fathoms) away. And when he finally fell down after the second shot he was only about a *braza* (fathom) distant from appellant. Then, from this short distance, and still holding the deadly *Kris* in his hand, he tried to get up, evidently to resume his assault on the appellant. Under these facts and circumstances, we believe that appellant was not entirely without justification in firing the third and last shot. Considering the grave and imminent danger with which the appellant was faced, the determination and strength of his assailant, and the proximity of said assailant, we cannot expect the appellant to be able to weigh coolly and with sufficient clarity of mind the question of whether or not one more shot was necessary to stop the assault made against him.

In view of the foregoing considerations we are of the opinion, and so hold that the appellant acted in complete self-defense in killing Judani Uskil.

Wherefore, the decision appealed from is reversed. The appellant Datu Bakial Buyuk is hereby acquitted with costs *de oficio*.

Reyes, Pres. J., and *Pecson, J.*, concur.

Judgment reversed.

[CA–G. R. No. 10391–R. February 24, 1954]

PAULA O. ALCALA, ET AL., plaintiffs and appellants, *vs.* BASILIO LAGROSA, ET AL., defendants and appellees

1. SUCCESSION; INHERITANCE; "RESERVA TRONCAL;" CASE AT BAR.—J. L. acquired lots 2621 and 2262 by operation of law upon the death of her children, which properties were in turn inherited

by said children from their deceased father. *Held:* Lots 2621 and 2262 are properties which J. L. during her lifetime, was obliged to reserve for the benefit of relatives within the third degree and who belong to the line from which said properties came (article 891, new Civil Code; article 811, old); and the said lots would pass to such relatives upon the death of the reservor J. L. to the exclusion of her nephews and nieces who are complete strangers to the properties in question.

2. ID.; ID.; ID.; EVIDENCE; PROOF REQUIRED OF PERSON CLAIMING ABSOLUTE OWNERSHIP OF PROPERTY UNDER THE LAW ON "RESERVA TRONCAL."—Where a person claiming to be the absolute owner of property by virtue of the provision of the Civil Code on *reserva troncal* fails to prove that he is the only living relative within the third degree from the *prepositus* upon whom the properties last devolved by descent and from whom the *reservor* acquired them by operation of law, he cannot be declared the absolute owner thereof in view of the possibility of the existence of other *reservees*.

APPEAL from a judgment of the Court of First Instance of Quezon. Cañizares, *J*.

The facts are stated in the opinion of the court.

Mario B. Contreras for plaintiffs and appellants.
De Mesa & De Mesa for defendants and appellees.

REYES, J. B. L., Pres., *J*.

On October 15, 1951, Paula O. Alcala, assisted by her husband Esteban Extra, filed this action (C. C. No. 5267) in the Court of First Instance of Quezon, claiming to be the absolute owner of lots Nos. 2621 and 2262 (with all existing improvements thereon) of the cadastral survey of Sariaya, Quezon Province, and seeking to recover said lots from the defendants Basilio, Antonio, Mercedes, and Consolacion, all surnamed Lagrosa. According to the complaint, the lots in question were inherited by Juana Lagrosa (deceased aunt of the defendants) from her children, Florito, Conrada, and Ester Alcala, who in turn acquired them by inheritance from their father Florencio Alcala, brother of the plaintiff Paula O. Alcala; that said Juana Lagrosa was therefore obliged to reserve the two parcels for the benefit of plaintiff Paula O. Alcala, who is within the third degree and belongs to the line from which the properties came; and that when Juana Lagrosa died on October 1, 1951, plaintiff Paula O. Alcala became the exclusive and absolute owner of the lots in question.

Because the defendants failed to answer the complaint within the reglamentary period, they were declared in default, and the lower Court ordered the reception of the evidence for the plaintiff.

The evidence for the plaintiff shows that the lands in question were originally owned by Estefania (or Epifania) O. Castro, mother of Florencio Alcala and plaintiff Paula O. Alcala; that upon the death of Estefania (or Epifania) O. Castro, said lands were adjudicated to Florencio Alcala as

his share of his mother's inheritance; that Florencio Alcala married Juana Lagrosa, with whom he had three children—Florito, Conrada, and Ester; that when Florencio Alcala died on April 13, 1923 (Exhibit B), the lots in question passed to his three minor children, in whose names they were registered during the cadastral hearings in Sariaya, Quezon Province, under original certificates of title Nos. 5120 (for lot 2621) and 5352 (for lot 2262), Exhibits F and G respectively; that all three children of Florencio Alcala died during their minority (Exhibits C, D and E), leaving as sole heir to the lots in question their mother Juana Lagrosa; that on October 21, 1942, Juana Lagrosa filed with the Register of Deeds of Lucena, Quezon an affidavit adjudicating to herself said lots 2621 and 2262 as inheritance from her deceased children, and obtained transfer certificates of title Nos. 17410 and 17411 (Exhibits I and J) in her name; that Juana Lagrosa died on October 1, 1951 and immediately after her demise, plaintiff and her husband demanded from the defendants (nephew and nieces of Juana Lagrosa) the delivery of the lots in question and the surrender of transfer certificates of titles Nos. 17410 and 17411 in the name of their deceased aunt, Juana Lagrosa; and that because the defendants refused to deliver the said lots as well as their titles to the plaintiff Paula O. Alcala, the latter filed this action.

The lower court, however, held that plaintiff had failed to show that she is the only surviving relative of Florencio Alcala on the side of their common parents (to which lots 2621 and 2262 originally belonged) entitled to the reservation provided by law, and dismissed the complaint for failure to state a cause of action. From this judgment, plaintiff Paula O. Alcala appealed, assigning six errors, which may be reduced into two simple questions:

(1) Whether or not the properties in question are reservable under article 891 of the new Civil Code; and

(2) If said properties are reservable, whether or not plaintiff-appellant is entitled to their absolute ownership as the only living *reservatario* thereof under the law.

Upon the facts established by the plaintiff-appellant in the court below, it is evident that lots 2621 and 2262, which passed to Juana Lagrosa by operation of law upon the death of her children—Florito, Conrada, and Ester Alcala—were in turn inherited by the latter children from their deceased father Florencio Alcala; i.e., said lots were acquired by Juana Lagrosa's children by gratuitous title from another ascendant. Lots 2621 and 2262 are, therefore properties which Juana Lagrosa, during her lifetime, was obliged to reserve for the benefit of relatives within the third degree and who belong to the line from which said properties came (article 891, new Civil Code; article 811, old); and the said lots would pass to such relatives upon

the death of the reservor Juana Lagrosa, to the exclusion of the defendants (nephews and nieces of Juana Lagrosa), who are complete strangers to the properties in question.

We agree with the lower court, however, that plaintiff-appellant can not be declared the exclusive owner of the lots in question as prayed for in her complaint, for the simple reason that she has failed to prove that she is the only living relative within the third degree of the children of her brother Florencio Alcala (upon whom the properties last devolved by descent and from whom the reservor Juana Lagrosa acquired them by operation of law) belonging to the line from which the properties came. While appellant testified during the trial that she and the deceased Florencio Alcala are sister and brother, she has not shown that the two of them are the *only* children of Estefania (or Epifania) O. Castro, the original source of the properties in question. In the absence of satisfactory evidence, we can not exclude the possibility of Estefania O. Castro's having other living children, who, then, would also be within the third degree from the children of Florencio Alcala and also entitled to share in the reservable properties in question. The maternal grandparents of appellant and her brother Florencio, if alive, are also reservees of the disputed lots because they are within the third degree from the *prepositi*, the children of Florencio; and there is here no proof that they are already dead.

We are thus constrained to affirm the dismissal of the present complaint, without prejudice to appellant's renewing her action against the defendants for the recovery of the same properties claimed here, wherein she can have another opportunity to sufficiently prove that there are no other living reservees of such properties other than herself.

Wherefore, the judgment appealed from is affirmed, without prejudice however to appellant's filing of another complaint based on the same cause of action litigated herein. Costs against plaintiff-appellant Paula O. Alcala.

Ocampo and *Pecson, JJ.*, concur.

Judgment affirmed, without prejudice to appellant's filing of another complaint based on the same cause of action litigated herein; costs against plaintiff-appellant Alcala.

[No. 7787-R. February 27, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VICENTE BONGATO, defendant and appellant

1. CRIMINAL LAW AND PROCEDURE; APPEAL; DOUBLE JEOPARDY; LOST OR DESTROYED RECORDS OF THE CASE; RECONSTITUTION; CASE MAY BE FILED ANEW IF RECONSTITUTION IS NOT POSSIBLE; CASE AT BAR.—Appellant was convicted in the lower court

for the same crime for which he stands charged in the instant case. He appealed to the Court of Appeals and, while the appeal was pending, the record of the case, except a letter of the Clerk of the Court of Appeals, index of exhibits and decision, was completely burned or lost during the last war. The present action was filed anew by the Provincial Fiscal because the period for reconstituting the records thereof expired. Appellant's counsel claimed that his case should be dismissed on two grounds: (1) this case should not have been filed anew and a retrial made, but should have been ordered reconstituted; and (2) double jeopardy. *Held:* It was perfectly proper for the provincial fiscal to file the present action anew in view of the impossibility of reconstitution (People *vs.* Comon, criminal case No. 4798 of the Court of First Instance of Surigao. Resolution of the Supreme Court, dated October 8, 1948; Ramos *vs.* Director of Prisons, G. R. No. L-3017, Resolution of July 22, 1949; and People *vs.* Dagatan, et al., G. R. No. L-4396, October 30, 1951). There can be no double jeopardy because there had been no previous acquittal (*autrefois acquit*) or conviction (*autrefois convict*) for the same offense, or dismissal or termination in a former case for the same offense without the express consent of the appellant.

2. CRIMINAL LAW; CIVIL LIABILITY FOR THE DEATH OF A PERSON; NO LIMITATION TO IMPOSITION OF MAXIMUM INDEMNITY; COMMONWEALTH ACT NO. 284.—Before the effectivity of the new Civil Code, the minimum civil indemnity for the death of a person was ₱2,000, pursuant to Commonwealth Act No. 284, but said Act did not set a limit to the maximum indemnity which the court may impose in a given case.

APPEAL from a judgment of the Court of First Instance of Misamis Occidental. De Leon, *J.*

The facts are stated in the opinion of the court.

Quiogue & Tuaño for defendant and appellant.

Solicitor General Juan R. Liwag and *Solicitor Roman Cansino, Jr.* for plaintiff and appellee.

DE LEON, *J.:*

Vicente Bongato was convicted of homicide thru reckless imprudence in the Court of First Instance of Misamis Occidental, and sentenced to suffer three years imprisonment, to indemnify the heirs of the deceased victim in the sum of ₱3,000, with subsidiary imprisonment not exceeding one year in case of insolvency, and to pay the costs. In this appeal interposed by him, he insists that he should have been acquitted of the crime charged because, contrary to the findings of the lower court:

1. He was not driving his truck at a fast speed at the time of the collision; and,

2. The deceased jumped out of the rig, of which he was a passenger, when the said rig moved backward and bumped against the front end of the engine of the truck driven by him (appellant Bongato) which was then already at a standstill.

The evidence adduced by the respective parties is correctly summarized in the decision appealed from as follows:

"The prosecution contend that:

"Early in the morning of January 21, 1940, Jose Obach was driving his rig with passengers who were going to church in Misamis, now Ozamis City. Upon arrival at barrio Manabay, Obach saw the truck of the Autobus at a distance of about 100 meters from him, running with great speed toward the opposite direction. As was then the traffic regulations, Obach was running at the left side of the street toward Misamis. When the truck of the Autobus was only about 30 meters from Obach, the horse became unruly. It turned to the right in such a way that the horse and the rig were placed crosswise the street. Obach tried to maneuver the horse back to its right of way, that is, along the left side of the road. But instead of moving forward, it was moving backward. To avoid falling to the ditch, Obach whipped the horse so that it would move forward, Obach at the same time, raising his hand as a sign to the bus to stop.

"The horse lurched forward, and Obach was able to manage it to take the opposite side of the road, but facing the direction where Obach came from. In other words, the rig took the right of way of the truck, then the horse stopped.

"But the truck, still running at high speed, ran on the same side of the street where the rig stopped and when it was about 10 meters behind the rig that was already at a standstill, Calixta Lasala, who was one of the passengers in the rig, shouted, 'bus, bus.' The bus did not stop and it bumped the hind end of the rig. Because of the impact, Timoteo Villagonzalo, also a passenger of the rig, was thrown out toward the bus.

"In the rig where there were two seats in the form of a bench facing each other lengthwise. Villagonzalo was sitting at the rear end of one of the seats and Lasala at the end of the other seat, so that the two were facing each other.

"When Villagonzalo was thrown out of the rig, his body fell on the engine of the bus, with his chest striking against the radiator. He was picked up unconscious from the ground between the two hind wheels of the bus. He was brought immediately to the clinic of Dr. Jose Libunao where he died about 20 minutes after his arrival thereat. The bus was being driven by the accused, and it belonged to the Interprovincial Autobus Company. The bus was running at such great speed that the two bars of the rig enclosing the horse were broken because of the impact of the collision. Obach also was thrown out to the ground and he suffered physical injuries that needed medical treatment to cure his injuries for eight days. He could not perform his ordinary labor during the same period.

"Dr. Libunao testified that the body of Villagonzalo presented many injuries but due to lapse of time, he could not remember all of them anymore. But what he could not forget was the big wound on the left side of the chest of the deceased, Villagonzalo, with four ribs broken. These injuries caused the death of Villagonzalo. In his long practice up to then, Villagonzalo was the first patient who died in his clinic. So those injuries that caused Villagonzalo's death are well impressed in his memory.

"There is no controversy in the facts that there was a collision between the rig and the bus; that in that collision, the impact was between the front end of the engine of the bus and the rear end of the rig; that Villagonzalo's body faceward struck the front end of the engine; that because of that collision, Villagonzalo suffered physical injuries that caused his death; and that Jose Obach was thrown out from the rig to the ground and suffered physical injuries The controversy is in how the collision happened; whether Villagonzalo jumped out of the rig as claimed by the defense, or he was

thrown out of it, as claimed by the prosecution; and whether or not the bus was running at a great speed.

"The accused, corroborated by his witness, Rosauro Paredes, testified: He was running on his right of way, that is, at the left side of the road facing the direction where rig came from—at about 20 to 26 kilometers per hour. He saw the rig for the first time when he was about 40 to 50 meters from it. The road was straight and its width was only enough for two buses running toward opposite directions to pass each other by. The rig was running in its right of way and was moving as usual. When he was only about 4 to 5 meters from the rig, the horse suddenly turned to its right placing the right across the street, thence took the bus' right of way, facing toward the same direction as the bus was then going, and then it stopped and moved backward.

"At the moment he saw the horse showing indications of being unruly and wanted to turn to the right, he applied his brake, but the bus did not stop at once but still moved forward 2 or 3 meters before it came to a standstill. It was at this moment when the bus moved forward after the brake was applied and the rig moved backward that Villagonzalo jumped out of the rig, with his body faceward, striking against the front end of the engine. In that fleeting moment, his body was sandwiched between the rig and the engine.

"The rear end of the rig did not suffer any damage, thus showing that the bus was not running at a great speed. The bars were broken by the horse in its frantic movements."

There is a preliminary question which we shall first discuss. It appears that in 1940, the herein appellant was convicted in the lower court for the same crime for which he now stands charged in the instant case (criminal case No. 1754). He appealed to this Court of Appeals (CA–G. R. No. 7860), and while the appeal was pending, the record of the case, except a letter of the Clerk of Court of Appeals, index of exhibits and decision, was completely burned or lost during the last war. When this appeal was orally argued before this court, appellant's counsel claimed that this case should have been dismissed in the court below, as urged by them therein, on two grounds: (1) this case should not have been filed anew and a retrial made, but should have been ordered reconstituted; and (2) double jeopardy.

There is no question that the present action was filed anew by the provincial fiscal of Misamis Occidental upon instructions of the office of the Solicitor General, because the period for reconstituting the records thereof expired since June 30, 1947 (Resolution of the Supreme Court, dated October 14, 1946, 42 Off. Gaz., No. 10, p. 2446). The present action was instituted in the municipal court of the City of Ozamis on January 5, 1949, and after the corresponding preliminary investigation was had, the same was remanded to the Court of First Instance of Misamis Occidental. On June 7, 1950, Republic Act No. 441 was approved, authorizing the filing of a petition for the reconstitution of the records of pending judicial proceedings destroyed during the last Pacific war, within one year from

June 7, 1950. Accordingly, it would likewise appear that in answer to a letter of one of the private prosecutors herein, Atty. Alfonso L. Penaco, proposing the reconstitution of the records of Criminal Case No. 1754, the office of the Solicitor General stated that, without the transcript and the exhibits, the proposed petition would only result in failure to reconstitute and would only delay the disposition of the action which has been pending since the filing of the new information.

The question is whether to subject the appellant to the requirements of a new trial upon the new information in the present case would be tantamount to placing him twice in jeopardy for the same offense.

Section 9, Rule 113, of the Rules of Court, provides that when a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. Under the above provision, it is clear that there can be no double jeopardy where there has been no previous acquittal (*autrefois acquit*) or conviction (*autrefois convict*) for the same offense, or dismissal or termination in a former case for the same offense without the express consent of the accused. But in any of these cases, legal jeopardy does not exist and a plea to that effect is not accordingly available but under the following conditions: (*a*) upon a valid complaint or information; (*b*) before a competent court; (*c*) after he has been arraigned; and (*d*) after he has pleaded to the complaint or information (Moran's Comments on the Rules of Court, Vol. II, pp. 665–666). In the case at bar, there is no pretense made that the appellant had been previously acquitted or convicted by final judgment in Case No. 1754, or that said case was ever dismissed or otherwise terminated without his consent. Upon the other hand, it is admitted that the records, including the stenographic transcripts and exhibits, were destroyed as a result of the last war before the appeal was finally resolved by this appellate court. In People *vs.* Dagatan, et al., G. R. No. L–4396, promulgated October 30, 1951, the Supreme Court says:

"The following passage from the decision of this Court in U. S. *vs.* Laguna, 17 Phil., 532, 540, has full application to the case now before us: Every person who finds himself in a court of justice,

in whatever capacity, must hold himself while there subject to those unforeseen events which suddenly and unavoidably intervene and change the whole aspect of things. The sickness or death of the judge, or of counsel for the prosecution, the destruction by fire or flood of the court-house and all the records and evidence of the pending trial—any of these things are sufficient to interrupt the course of the proceedings and to require that they be begun anew. Such events weigh equally against all. As no one can be charged with their occurrence, so no one can legally lose or profit by their results. While the law protects persons charged with crime from the unjust and arbitrary acts of man, there is no shield which may be interposed against the tyranny of unforeseen events. Until the proceedings which, under the system which the law provides, constitute his trial are terminated, the happening of an unforseen event which renders the continuance of his trial for the time impossible, as it can not be used for his conviction, can not be urged for his absolution. * * *"

It was, therefore, perfectly proper for the provincial fiscal to file the present action anew in view of the impossibility of reconstitution (People *vs.* Comon, criminal case No. 4798 of the Court of First Instance of Surigao, Resolution of the Supreme Court, dated October 8, 1948; Ramos *vs.* Director of Prisons, G. R. No. L–3017, Resolution of July 22, 1949; and People *vs.* Dagatan, et al., *supra*). While an authentic copy of the decision of the lower court in case No. 1754 is available, the hearing of a case anew is authorized when it is impossible to obtain an authentic copy of the evidence and if the stenographic notes have been destroyed (sections 14 and 64 of Act No. 3110).

Regarding the merits of this case, appellant averred that he was running at about 10 to 15 kilometers per hour at the time of the collision, and that it was the rig of Jose Obach that bumped his bus. Calixta Lozada, a passenger in the rig driven by Obach, substantiated the testimony of said Obach that it was the bus which bumped the rear end of the rig. Upon the other hand, Rosauro Paredes, a passenger in the bus driven by the appellant, testified that it was the rig of Obach which bumped the front end of the bus while the latter was already at a standstill. We have gone carefully over the evidence of record, and we find no facts or circumstances which the court below, which was in a better position than this Court to gauge the credibility of the witnesses who testified at the trial, might have overlooked or misinterpreted. We also can not give full faith and credit to the testimony of defense witness Rosauro Paredes because he was the traffic inspector of the transportation company which owned and operated the bus driven by the appellant. The appellant admitted that his bus travelled about 3 meters more after its brakes were applied. This fact would strongly corroborate the claim of the prosecution that the bus was traveling at a high speed. Again, as aptly commented by the solicitor general, it is hard to believe that deceased Villagonzalo would jump out of the rig towards the truck. The

natural tendency in a situation like this, when one is aroused to action by the instinct of self-preservation, is to move away from the center of impending danger.

We agree with the Solicitor General and defense counsel that the appellant should have been sentenced to suffer an indeterminate prison term. In computing the penalty it imposed upon the accused, the lower court had apparently misquoted section 2 of Act No. 4103, by using the word "minimum", instead of "maximum", in the phrase "* * * to those whose maximum term of imprisonment does not exceed one year." This court, therefore, hereby sentences the appellant to suffer an indeterminate penalty ranging from 6 months and 1 day to 3 years, with subsidiary imprisonment in case of insolvency. We can not, however, agree with the contention of defense counsel that the appellant should be ordered to indemnify the heirs of the deceased in the sum of ₱2,000 only. While Commonwealth Act No. 284, cited by defense counsel, fixes the minimum indemnity at ₱2,000.00, it does not set a limit to the maximum indemnity which the court may impose in a given case.

Modified with respect to the personal penalty only, the decision appealed from is hereby affirmed, with costs against appellant. So ordered.

Reyes, Pres. J., and *Dizon, J.*, concur.

Judgment modified.

[No. 12111-R. March 5, 1954]

MARIANO ORTEGA, petitioner, *vs.* HONORABLE IGNACIO DEBUQUE, ET AL., respondents

1. RECORD ON APPEAL; AMENDMENT; COURT'S DUTY TO SET TIME LIMIT FOR AMENDMENT.—The second part of section 7 of Rule 41 makes it the duty of the court to set in the order directing the amendment of the record on appeal, the time limit for the amendment. Where no time limit is set in the order, the appellant can only be held to amend the record within a reasonable time, and without unnecessary delay.
2. ID.; ID.; ID.; RULE GOVERNING AMENDATORY PROCEDURE.—The amendatory procedure is governed by section 7 of Rule 41. Once the original record is submitted (with the appeal notice and bond) within the 30 days prescribed by section 3, the period set by the latter section becomes *functus officio*, and section 7 takes over. Otherwise, if the appellant were to file his original record on the 30th day after notice of judgment, as it is his perfect right to do, there would be no time left for him, under respondent's theory, to file an amended record on appeal. To argue that he should seek an extension is to impose on appellant the duty to set the time limit that section 7 clearly imposes on the court. A careful perusal of section 7 of Rule 41 will show that the extensions spoken of therein refer to extensions of the time limit set in the order requiring amendment of the record.
3. ID.; ID.; ID.; COURT'S FAILURE TO FIX TIME LIMIT TO AMEND; APPELLEE DUTY-BOUND TO CALL COURT'S ATTENTION TO OVER-

SIGHT.—In cases where the court overlooks fixing the time limit for the submission of the amended record, the duty of calling the court's attention to the oversight clearly lies on the winning party or appellee, who is logically the one most interested in having the judgment in his favor affirmed by the appellate court as soon as possible. Where he fails to act, he waives the objection, and can not complain of delay. *Vigilantibus sed non dormientibus jura subveniunt.*

ORIGINAL action in the Court of Appeals. Certiorari and mandamus.

The facts are stated in the opinion of the court.

Borromeo, Yap & Borromeo for the petitioner.
Pelaez, Pelaez & Pelaez for respondents.

REYES, J. B. L., *Pres., J.*

Application for a writ of certiorari and mandamus to compel the Court of First Instance of Cebu to approve and certify to this court the record of appeal submitted by the petitioner Mariano Ortega, as defendant-appellant in civil case No. 2030 of that court, entitled Dionisio O. Yap *vs.* Mariano Ortega.

It appears that the respondent judge rendered judgment in favor of the plaintiff Yap in civil case No. 2030 (Annex A of petition) on August 31, 1953, but defendant received notice thereof only on September 10, 1953. On October 6, i.e., 27 days from notice of judgment, defendant submitted his record of appeal, notice of appeal, and appeal bond (Annexes B, C and D, petition). Upon objection of plaintiff the court, on October 12, 1953, ordered defendant to submit an amended Record of Appeal, to include certain motions and orders; but the court failed to fix the time for amending the record (Annex E).

On October 22, 1953, the defendant asked that he be allowed to substitute certain pages of his original record with others containing the matters that, according to the order of October 12, should be included therein (Annex F). The plaintiff objected, and on October 24 the court denied the petition and ordered the appellant to file an entire amended Record on Appeal. In the same order, the court said:

"Let the approval of the amended Record on Appeal be set for hearing on November 14, 1953, at 8:30 a.m." (Annex H.)

The amended record on appeal (Annex I) was filed about November 2, 1953, and set for hearing on November 14, 1953. For the first time, the plaintiff claimed that it had been untimely filed. According to plaintiff, the amended record should have been filed within the 3 days that remained of the original 30-day appeal period granted by section 3 of Rule 41, after deducting the 27 days that elapsed from the notice of judgment to the submission

of the original record, because the court had not fixed the time for submitting the amended record (Annex J).

Plaintiff's contention was sustained by the respondent judge, and on November 16, it denied approval of the amended record (Annex K). Whereupon, defendant-appellant resorted to this court, and a preliminary injunction was issued to restrain the execution of the judgment for the time being.

The issue before us is the following: Should the party appealing bear the *onus* of the trial court's failure to fix, in its order of October 12, 1953, the time within which the original record of appeal should be amended, as required by section 7 of Rule 41?

The solution to be given is clear. The second part of section 7 of Rule 41 makes it the duty of the court to set in the order directing the amendment of the record on appeal, the time limit for the amendment:

"SEC. 7. *Hearing and approval of record.*—* * * If the trial judge orders the amendment of the record, the appellant, *within the time limited in the order*, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft."

Where no time limit is set in the order, the appellant can only be held to amend the record within a reasonable time, and without unnecessary delay. This has been done by petitioner. It is well to note that the petitioner-appellant endeavored to hasten the approval of the record by proposing that he be authorized to redraft and substitute the corresponding pages, instead of rewriting the whole record, a process that would have required a longer period; but it was the respondent appellee who objected to the shortcut, on the fanciful grounds that the Rules require redrafting the whole record and that to substitute pages "will be tantamount to defacing the record of this case" (Annex G), as if the record on appeal were not to be kept apart and sent separately to the appellate court. Unfortunately, the trial judge fell for this specious argument, and the matter was further delayed. For such result only respondent Yap is to blame, and it would be now unjust and unfair that the appellant should be made to bear the burden both of the trial judge's oversight in not fixing the period for amending, as well as of appellee's subsequent dilatory tactics.

The argument that appellant should have asked for extension if he could not submit his amended record within the 3-day balance of the thiry-day period fixed by section 3 of Rule 41 for the taking of appeals, unwarrantedly assumes that the period set in section 3 governs the

submission of the amended record of appeal. This is not the case, for as we have seen, the amendatory procedure is governed by an entirely different section: section 7 of Rule 41. Once the original record is submitted (with the appeal notice and bond) within the 30 days prescribed by section 3, the period set by the latter section becomes *functus officio*, and section 7 takes over. Otherwise, if the appellant were to file his original record on the 30th day after notice of judgment, as it is his perfect right to do, there would be no time left for him, under respondent's theory, to file an amended record of appeal. To argue that he should seek an extension is to impose on appellant the duty to set the time limit that section 7 clearly imposes on the court. A careful perusal of section 7 of Rule 41 will show that the extensions spoken of therein refer to extensions of the time limit set in the order requiring amendment of the record.

In cases like this, where the court overlooks fixing the time limit for the submission of the amended record, the duty of calling the court's attention to the oversight clearly lies on the winning party or appellee, who is logically the one most interested in having the judgment in his favor affirmed by the appellate court as soon as possible. Where he fails to act, he waives the objection, and can not complain of delay. *Vigilantibus sed non dormientibus jura subveniunt.*

The writ prayed for is granted. The order rejecting the amended record of appeal in civil case No. 2030 of the Court of First Instance of Cebu as filed out of time is hereby set aside, and the respondent judge is ordered to approve and certify said record to this court. The preliminary injunction is made permanent. Costs shall be taxed against respondent Dionisio Yap. So ordered.

Ocampo and *Pecson, JJ.*, concur.

Writ granted; order rejecting the amended record on appeal in Civil Case No. 2030 *of the Court of First Instance of Cebu set aside; respondent Judge ordered to approve and certify said record.*

[No. 10180–R. March 10, 1954]

NIEVES VDA. DE UNGSON, plaintiff and appellant, *vs.* NATIVIDAD B. DE LOPEZ and EMILIO LOPEZ, defendants and appellees.

1. OBLIGATIONS AND CONTRACTS; OBLIGATION WITHOUT TERM; ACTION; PROPER ACTION IS TO ASK THE COURT TO DETERMINE THE TERM FOR THE FULFILLMENT OF THE OBLIGATION.—On obligations coming within the purview of article 1128 of the old Civil Code the only action that can be maintained is that to ask the court to determine the term within which the obligor must

comply with his obligation for the reason that the fulfillment of the obligation itself cannot be demanded until after the court has fixed the period for its compliance and such period has arrived. (Concepcion *vs.* People of the Philippines, 74 Phil., 62, and Gonzales *vs.* De José, 66 Phil., 369). Being purely for collection of the debt without any petition for the fixing of a term of the obligation, the action in this case is obviously improper.

2. ID.; ID.; ID.; MORATORIUM LAW NOW NULL AND VOID.—The contention that the period of limitations in this case was suspended or interrupted by the promulgation of Executive Orders Nos. 25 and 32, commonly known as "Debt Moratorium Law" is untenable. Debt moratorium under Executive Orders Nos. 25 and 32 is a right granted to, and may be invoked or waived by, the debtors. The action for the fixing of a term of an obligation is not affected or covered by the debt moratorium. The Supreme Court has already declared on May 18, 1953 (Rutter *vs.* Esteban, G. R. No. L-3708) that R. A. No. 342, as well as Executive Orders Nos. 25 and 32 are null and void and without effect.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the court.

Cachero & Madarang for plaintiff and appellant.

Quisumbing, Sycip, Quisumbing & Salazar for defendants and appellees.

GUTIÉRREZ DAVID, *J.:*

This is an appeal by plaintiff from a judgment of the Court of First Instance of Manila dismissing her action to collect the sum of ₱3,000 from defendants.

It appears that on November 5, 1940, Natividad B. de López, with the conformity of her husband Emilio López, obtained a loan of ₱3,000 from Nieves Vda. de Ungson, and executed a "Recibo Provisional" marked as Exhibit "A", reading as follows:

"RECIBO PROVISIONAL

(Son ₱3,000)

"Reconozco por la presente estar en deber a Doña Nieves Vda. de Ungson la suma de tres mil (₱3,000) pesos cantidad recibida en efectivo metálico al interes de siete por ciento anual.

"Esta deuda será garantizada más tarde por una segunda hipoteca con mi propiedad situada en Pasong Tamo, San Pedro Makati, Rizal, tan pronto realiza la transacción de Primera hipoteca de dicha propiedad al Banco Agrícola de Filipinas.

"Manila, Noviembre 5, de 1940.

"Con mi consentimiento marital:

(Fdo.) EMILIO LOPEZ (Fdo.) NATIVIDAD B. DE LÓPEZ".

(Exhibit A)

On May 17, 1951, Nieves Vda. de Ungson filed with the court below her complaint seeking to collect the amount of the above-mentioned note. The complaint was received by defendants on May 18, 1951. Defendants filed a motion to dismiss which was subsequently denied. On July 14,

they moved for an extension of 10 days from July 16, within which to file their answer to the complaint. The motion was granted. On July 26 defendants filed another motion for a further extension of 10 days for the filing of their answer which was also granted. On August 3, they filed their answer which was duly admitted.

Alleging that the said answer was filed beyond time, because defendants' second motion for extension was filed out of the previous period of extension granted, plaintiff filed below a petition praying that defendants be declared in default. Said petition was submitted in open court during the hearing of this case and was denied. The court below, after hearing the case on the merits, rendered a judgment declaring that the answer of the defendants was filed in due time, dismissing the complaint on the ground that the action has already prescribed and expired, citing the case of Seoane *vs.* Franco, 24 Phil., 309, and dismissing also the counterclaim of the defendants, without pronouncement as to the costs.

Plaintiff now seeks the reversal of said judgment attributing to the trial court the following errors: (1) in not declaring the defendants in defaults; (2) in not fixing the period within which the defendants must pay the obligation mentioned in Exhibit "A"; (3) in applying the case of Seoane *vs.* Franco, 24 Phil., 309 to the case at bar; (4) in holding that plaintiff's action has already prescribed and expired; and (5) in not holding that Exhibit "A" is still valid, enforceable and demandable.

The first question to be determined is whether or not defendants' second and last motion for extension to file their answer, dated and recorded on *July 26, 1951,* was seasonably filed, that is, within the previous extension given by the court of 10 years from *July 26, 1951.* Appellant contends that the said 10 days of first extension expired on July 25 and not on July 26. This is wrong. In keeping with the rule of computation in this jurisdiction (section 1, Rule 28 of the Rules of Court) or the "exclude-the-first and include-the-last day method", the tenth day from *July 16, 1951* fell on *July 26, 1951.* Since the second extension of ten days from July 26, 1951 was granted and the answer was filed during said period, the defendants could not be declared in default.

It is undisputed and, indeed, beyond debate, that the actionable document (Exhibit "A") in this case is governed by article 1128 of the old Civil Code which provides:

> "If the obligation does not fix a term, but it may be inferred from the nature and circumstances thereof that it was intended to grant a term to the debtor, the courts shall fix the duration of the same.
>
> The courts shall also fix the duration of the term when it has been left to the will of the debtor."

On obligations coming within the purview of the above cited provision the only action that can be maintained is that to ask the court to determine the term within which the obligor must comply with his obligation for the reason that the fullfillment of the obligation itself cannot be demanded until after the court has fixed the period for its compliance and such period has arrived. (Concepcion *vs.* People of the Philippines, 74 Phil., 62, and Gonzales *vs.* De José, 66 Phil., 369). Being purely for collection of the debt without any petition for the fixing of a term of the obligation, the action in this case is obviously improper.

Be it for the fulfillment of an obligation or for the fixing of a term, the present action is already barred by the statute of limitations in accordance with section 43 (1) of the Code of Civil Procedure. (Gonzales *vs.* De José, *supra*). From the execution of Exhibit "A" on November 5, 1940 until the filing of the action on May 17, 1951, ten years have elapsed. The case of Seoane *vs.* Franco, 24 Phil., 309, was properly cited by the court below for it involves facts and questions essentially similar to those of the case at bar.

The contention that the period of limitations in this case was suspended or interrupted by the promulgation of Executive Orders Nos. 25 and 32, commonly known as "Debt Moratorium Law" is untenable. Debt moratorium under Executive Orders Nos. 25 and 32 is a right granted to, and may be invoked or waived by, the debtors. The action for the fixing of a term of an obligation is not affected or covered by the debt moratorium. The Supreme Court has already declared on May 18, 1953, (Rutter *vs.* Esteban, G. R. No. L–3708) that R. A. No. 342, as well as Executive Orders Nos. 25 and 32 are null and void and without effect.

Finding that the court below committed none of the errors assigned, we hereby affirm the judgment appealed from with cost in this instance against the appellant.

Rodas and *Martinez, JJ.*, concur.

Judgment affirmed with costs against the appellant.

[No. 11434–R. March 15, 1954]

MARTIN G. RUPERTO, petitioner and appellee, *vs.* DANIEL DIONALDO, oppositor and appellant

1. COURTS; JUDGMENT OR ORDER; EXPRRESS RESERVATION OF A QUESTION, EFFECT UPON JUDGMENT OR ORDER.—When a question is expressly reserved, a judgment or decree is not conclusive with respect to such question (Reynolds *vs.* Churchill Co., 187 Cal. 543, 402 P. 865; Wagner *vs.* Garin, 155 App. Div. 140 NYs. 936).
2. SPECIAL PROCEEDINGS FOR ADMINISTRATION OF ESTATE; DISCRETIONARY POWER OF TRIAL COURT.—In a special proceeding for

administration of an estate, the trial court enjoys ample discretionary powers therein, and appellate courts should not interfere with or attempt to replace the action taken by it unless it be shown that there has been positive abuse of discretion (Padilla *vs.* Jugo, G. R. No. 45617, 38 Off. Gaz., Peralta *vs.* Peralta, 40 Off. Gaz., 10th Sup. p. 14). In consonance with this ruling, the simple act of ordering the delivery of the share of an heir to her transferee, without prejudice, is within the ample discretionary powers of the court *a quo*.

APPEAL from a judgment of the Court of First Instance of Negros Oriental. Narvasa, *J.*

The facts are stated in the opinion of the court.

Gaudel, Florendo & Mancao for oppositor and appellant.
Fructuoso Villarin for petitioner and appellee.

PEÑA, *J.:*

On July 3, 1936, Raymunda Sabanal, as surviving spouse, filed a petition for the administration of the properties left by her deceased husband, Alfonso Facturan. Before hearing the petition, the court on July 14 of the same year appointed her as special administratrix, which appointment was made regular, together with one Luis Dionaldo who was appointed co-administrator.

On September 5, 1949, as Raymunda Sabanal had already died, Daniel Dionaldo was appointed co-administrator with Luis Dionaldo who, for having been allowed to resign, the former assumed full administration pursuant to the order of December 3.

Pending the distribution of the properties to the heirs of Alfonso Facturan, one of his heirs by the name of Tomasa Facturan executed on July 10, 1941, a public instrument of "Compra-Venta" whereby she sold, transferred, and conveyed to Dr. Martin G. Ruperto "todo mi derecho, interés, acción y participación en y sobre el terreno rústico, con sus mejoras, situado en el barrio llamado Solongon, municipio de la Libertad, Negros Oriental", having agreed, among other things, that "el comprador Martín G. Ruperto sera puesto en posesión de la parcela que me corresponda al verificarse la división de este inmueble entre mis coherederos."

On *November 29, 1847, Civil Case No.* 2271, entitled "Daniel Dionaldo et al., *versus* Martin Ruperto et al." was instituted in the aforesaid court for the annulment of the aforementioned instrument of "Compra-Venta", which until now is not terminated.

On *September 6, 1949,* Martin G. Ruperto filed in the present special proceedings No. 331 a pleading of intervention, alleging that he has acquired by purchase all the rights, interest and participation of the late Tomasa Facturan in the Solongon estate, and praying that the court take into consideration such assignment of right

in favor of the assignee for all effects that may prove legal and equitable.

An amicable settlement was submitted to the court on September 6, 1949, by the heirs of Alfonso Facturan and Raymunda Sabanal, which was approved on the same date and supplemented on September 10, 1949.

On September 15, 1949, a motion for declaration of heirs was filed, among whom was the deceased Tomasa Facturan whose heirs are Daniel Dionaldo, Robustiano Dejaresco, Manuel Dejaresco, Estrella Dejaresco, Zoilo Dejaresco and Leonida Dejaresco.

On August 18, 1951, Martin Ruperto filed an opposition to the declaration of Daniel Dionaldo, Manuela, Robustiano, Estrella, Zoilo and Leonida, surnamed Dejaresco, as heirs of Alfonso Facturan on the ground that Tomasa Facturan, from whom they derived their rights, had already sold her share consisting of 1/12 of the entire Hacienda Solongon to said Ruperto.

The motion filed on March 19, 1952, by Atty. Teodoro R. Florendo, on behalf of some of the heirs of the deceased Alfonso Facturan and Raymunda Sabanal was approved on March 22, 1952.

A project of partition was submitted on December 22, 1952, by administrator Daniel Dionaldo in compliance with the order of the court dated November 22 of the same year. And amendment to the declaration of heirs and project of partition was made on January 17, 1953.

On January 31, 1953, Martin G. Ruperto filed a motion for the outright delivery to him of Tomasa Facturan's share in the Hacienda Solongon, to which Daniel Dionaldo filed his answer.

On February 7, 1953, the court approved the project of partition, and on February 19 the parties made a drawing of lots before the clerk of court for the distribution of the other portions of the estate. Consequently, *lots 7 and 5* of the sketch attached to the project of partition were adjudicated to the heirs of Tomasa Facturan. Thus, on February 19, 1953, Martin G. Ruperto filed an application for distribution and delivery of the share of Tomasa Facturan, to which Daniel Donaldo filed his answer. The court issued on March 14, 1953, an order, the dispositive portion of which reads as follows—

"Wherefore, as prayed for, and without prejudice to the continuing the trial of Civil Case No. 2271 above referred to, the herein administrator is hereby ordered to deliver, by appropriate instrument of conveyance, the aforsaid lots Nos. 5 and 7 mentioned in order of this court of February 19, 1953 to applicant Martin G. Ruperto upon the latter's executing bond to said administrator in the amount of ₱10,000 to answer for damages that may be occasioned the heirs of Tomasa Facturan by reason of the delivery to him of the said lots."

On March 21, 1953, Martin G. Ruperto executed in due form the bond mentioned in the aforesaid order.

Not satisfied with the foregoing order, Daniel Dionaldo filed a motion for reconsideration which was denied after a reply thereto was filed on April 10, 1953. Consequently, Daniel Dionaldo come before us, contending that the lower court erred—

1. In ordering in this special proceedings that the share of Tomasa Facturan be delivered to Martin G. Ruperto for such an order in effect is a premature judgment of the rights of the parties in Civil Case No. 2271;

2. In ordering without jurisdiction in this special proceedings the delivery of lots Nos. 5 and 7 (subject matter in the contract Escritura de compra-venta de una parte proindivisa de propiedad inmueble") to Martin G. Ruperto; and

3. In denying the motion for reconsideration and to set aside its decision.

It is wrong to argue that it is a premature judgment of the rights of the parties in Civil Case No. 2271, (which is for the annulment of the contract of "Compra-Venta") when the trial court ordered the share of Tomasa Facturan in the Hacienda Solongon delivered to Martin G. Ruperto. The trial court carefully and explicitly qualified its order by stating *without prejudice to continuing the trial of Civil Case No. 2271 above referred to.* Such reservation clearly negates appellant's contention. When a question is expressly reserved, a judgment or decree is not conclusive with respect to such question (Reynolds *vs.* Churchill Co., 187 Cal. 543, 202 P. 865; Wagner *vs.* Garin, 155 App. Div. 140 NYs. 936).]

And—

"A judgment dismissing an action 'without prejudice' is not conclusive as to any issues joined." (Robinson *vs.* American Car Co., 135 Fed. 693, 68 CCA 331.)"

If, ultimately, the contract of "compra-venta" would be annulled by the courts of justice, as sought by appellant in Civil Case No. 2271, there would be no prejudice on his part to gain what would have been unlawfully sold by his mother, Tomasa Facturan, aside from the fact that they are protected by the bond. In the same vein, appellee Martin G. Ruperto, as purchaser of the share of Tomasa Facturan, should not be prejudiced from receiving what he purchased long time ago upon the distribution of her share from the estate of the deceased Alfonso Facturan.

As this is a special proceeding for administration of an estate, the trial court enjoys ample discretionary powers therein, and appellate courts should not interfere with or attempt to replace the action taken by it unless it be shown that there has been a positive abuse of discretion (Padilla *vs.* Jugo, G. R. No. 45617, 38 Off. Gaz., 1; Peralta *vs.*

Peralta, 40 Off. Gaz., 10th Sup. p. 14). In consonance with this ruling, the simple act of ordering the delivery of the share of Tomasa Facturan to Martín Ruperto, without prejudice, is within the ample discretionary powers of the court *a quo*.

The order appealed from in the instant case is not similar to the judgment appealed from in the cases of Devesa *vs.* Arbes, 13 Phil., 273; and Mallari *vs.* Mallari, G. R. No. L–4556, Feb. 23, 1953, cited by appellant, because in the present case the trial court has wisely reserved the continuation of the trial of Civil Case No. 2271 which, as already stated, if decided in his favor, he would not lose what he would have inherited from his mother. The trial court did not intend to prejudice or do any harm to Daniel Dionaldo; it only extended justice long time due to Martin G. Ruperto, at least pending the determination of the contract of "compra-venta" sought to be annulled.

Wherefore, on reversible error having been committed by the court *a quo*, the order appealed from is hereby affirmed, without pronouncement as to costs.

It is so orderd.

Felix and *Rodas, JJ.*, concur.

Judgment affirmed.

[No. 7909–R. March 20, 1954]

ISABELO MONTESCLAROS, plaintiff and appellee, *vs.* AGRIPINO ABELLA, ET AL., defendants and appellants

RECONSTITUTION OF LOST TITLES; LACK OF PROPER NOTICE; EFFECT UPON RECONSTITUTION TITLE; SECTIONS 75, 76, 77, ACT 3110.—Appellants argue that they should not be penalized for the failure of the Register of Deeds to comply with sections 75, 76, and 77 of Act 3110 of the Philippine Legislature concerning reconstitution of lost titles, by not causing the loss to be published in the Official Gazette and in a newspaper of general circulation. But appellants, as applicants for reconstitution, were the ones interested, and therefore, called upon, to bring to the attention of the Registrar or of the Court any defect in the reconstitution if they desired to have a valid reconstituted title. They can not take advantage of the lack of proper reconstitution notice and seek to make the new title binding on parties at whose back it was obtained.

APPEAL from a judgment of the Court of First Instance of Cebu. Varela, *J.*

The facts are stated in the opinion of the court.

Rafael Q. Gimarino for defendants and appellants.
Abundio A. Aldemita for plaintiff and appellee.

REYES, J. B. L., *Pres., J.:*

In the Court of First Instance of Cebu, Case No. R–94 of said court Isabelo Montesclaros sought to be declared the true owner of lot 5309 of the Carcar Cadastre, and to

eject the defendants Agripino Abella and Fortunata Alesna therefrom. The defendants pleaded title to the lot. After trial, the court *a quo* rendered judgment as follows:

"Wherefore, this Court renders decision in favor of the plaintiff and against the defendants:

(*a*) Declaring the plaintiff absolute owner of lot 5309;
(*b*) Ordering the defendants to turn over the possession of said lot to the plaintiff; and
(*c*) To pay the costs of the proceedings."

(Rec. App., p. 17)

The evidence of both parties agree that lot No. 5309 of the cadastral survey of Carcar, Cebu, was originally owned by Cipriano Alesna, Teodora Alesna, Juana Alesna, Gervasia Alesna, in equal shares. By virtue of decree No. 124755 issued by the Court of First Instance in Cadastral Case No. 6, G. L. R. O. Cadastral Record No. 66, said lot was ordered registered in the name of the four on August 7, 1922; and on August 28, 1922, Certificate of Title No. 10936 was issued by the provincial Register of Deeds (Exhibit K.).

For the plaintiffs it was shown that two of the co-owners, Juana Alesna and Gervasia Alesna, sold one-half of lot 5309 to Magno Regis, and executed the corresponding notarial deed of conveyance on December 2, 1922 (Exhibit H); that Magno Regis also acquired the shares of the remaining co-owners, Cipriano and Teodora (that of the latter through a prior vendee, Nicanor Alegarme), by virtue of private documents of sale; that the vendors thereafter surrendered the certificate of title to him; that Magno Regis then took possession of the property and had it assessed in his name in the tax rolls (Exhibit E), but before he could complete the necessary steps to record his acquisition, Magno Regis died in 1929. He left a will (Exhibit A) wherein, *inter alia,* he stated:

"7.ª—Que el terreno donde está la casa de Nicanor Alegarme como parte del lote No. 5309 título Original No. 10939 del Catastro de Carcar, del Norte terreno de Arsenio Climaco hasta el riechuelo detras de su casa del Este al Oeste unas 35 brazas, sea del mismo Nicanor Alegarme mediante el pago de sesenta pesos."

The administrator of the estate, Atty. Ramon R. Duterte, who was married to the sole daugther and heir of Magno, Rosario Regis, took possession of Magno Regis' properties and papers after his death, and testified that among them were the certificate of title (No. 10936) and the deeds by the original four owners. On or about 1939, Rosario Regis de Duterte sold lot No. 5309 to plaintiff (appellee herein) Isabelo Montesclaros, and delivered to the purchaser all documents pertinent to the same; but said documents, with other papers, were seized by agents of the Anti-Usury Board on September 11, 1940. All of the papers seized were destroyed in the possession of the

Anti-Usury Board when Manila was liberated from the Japanese in 1945, as certified by its executive officer (Exhibit G).

For the defendants-appellants, it is claimed that the original registered owners had mortgaged the disputed lot in favor of Sixto Alegarme in 1916 for ₱100; that the mortgagors later borrowed the amount from Magno Regis, paid off Alegarme, and agreed that Magno Regis should hold the land in antichresis, paying him one-half of the products. Defendants Agripino Abella, grandson of Gervasia Alesna (one of the original four owners) and married to Fortunata Alesna, a natural child of Teodora Alesna, testified that in 1920, he purchased the land, but "the title was in my possession but it was mortgaged by (to) Sixto Alegrame for ₱100. It was in 1916" (t. s. n. Martinez, pp. 24–25), and Abella had it assessed in his name (t. s. n. p. 30); that in 1940 or 1941, he asked Regis for an accounting and vainly demanded the title; that he was informed that it was lost and in 1942, he obtained an order for the issuance of a new certificate, that the latter was lost in the burning of his house during the occupation, wherefore, in 1946, he and his wife had it reconstituted and a new duplicate certificate was issued in the name of Fortunata Alesna (Exhibit 2).

We agree with the court below that the preponderance of the evidence is that Magno Regis acquired the ownership of the entire lot. Since 1922 he had it taxed in his name, behaved as its sole and absolute owner, gathered it fruits, and disposed of a part thereof in his will (Exhibit A), without reliable evidence of molestation from any one. The appellant Abella's attempt to limit the character of the possession of Magno Regis to that of an antichretic creditor is not supported by reliable proof. In fact, the contention is destroyed by Exhibit H, which shows that Juana and Gervasia Alesna conveyed their interest to Regis by way of absolute sale and not by way of security.

Abella's testimony that he purchased the land in 1920 (t. s. n. Martinez, p. 28) and held the certificate of title thereof, is palpably untrue, for Exhibit K (the certified copy of the decree of registration) shows that the certificate of title, No. 10936, was issued for the first time in 1922, so that is was impossible for Abella to hold the certificate two years before it was issued. This material falsity is emphasized by the consideration that if Abella had really bought the land in 1920, his grandmother Gervasia would not have sold her interest to Regis in 1922 to the detriment of her grandson. Such act would do violence to human nature and family affections. Finally, if it was Abella who purchased the land, why was the title reconstituted in the name of his wife, Fortunata Alesna?

The main reliance of appellants is that Regis never recorded his acquisition. This would be a valid objection

if there had been another purchaser with recorded title; but the record shows none, since the evidence proves that Abella's alleged purchase is fanciful and fictitious.

In connection with the reconstituted duplicate certificate of title No. 213 (Exhibit 2) issued in 1946 in the name of defendant-appellant Fortunata Alesna, the court below ruled:

"Exhibit '2', although issued on the strength of the order of this Court of June 29, 1946, nevertheless the issuance of the reconstitution was not in accordance with the law. For this reason, Exhibit '2', cannot be given any probative value to support the contention that (of) the defendant Fortunata Alesna that she is the registred owner of the lot in question." (Rec. of App., p. 16).

Appellants argue that they should not be penalized for the failure of the Register of Deeds to comply with sections 75, 76, and 77 of Act 3110 of the Philippine Legislature concerning reconstitution of lost titles, by not causing the loss to be published in the *Official Gazette* and in a newspaper of general circulation. But appellants, as applicants for reconstitution, were the ones interested, and therefore called upon, to bring to the attention of the Registrar or of the Court any defect in the reconstitution if they desired to have a valid reconstituted title. They can not take advantage of the lack of proper reconstitution notice and seek to make the new title binding on parties at whose back it was obtained.

It may not be amiss to call attention to the fact that the very petition for reconstitution filed by Fortunata Alesna is suspicious on its face: for while she claims to have been the regestered owner of lot 5309 of the Carcar cadastre and to have lost the certificate of title, she is unable to even state the number of the lost certificate, or to describe how she acquired it or that it was originally covered by certificate No. 10936.

Premises considered, we find no reversible error in the decision appealed from. Wherefore, the same is hereby affirmed with costs against appellants.

Ocampo and *Pecson, JJ.*, concur.

Judgment affirmed.

[No. 8916-R. March 23, 1954]

IN THE MATTER OF THE TESTATE ESTATE OF MATEA DE LOS SANTOS. FEDERICO CORPUS, petitioner and appellant, *vs.* SOTERO DE LOS SANTOS AND EULALIA DE LOS SANTOS, oppositors and appellees.

1. EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT; SETTLED RULE; EXCEPTION.—Notwithstanding the settled rule that the findings of fact of the trial court must be given great weight and should not be unnecessarily disturbed, we feel constrained and bound to reverse them when said court, in the appreciation of the evidence, had arbi-

trarily disregarded the whole testimony of the witnesses for appellant while it gave undeserved credit to that of the witnesses for appellees.

2. WILL; SUBSCRIBING WITNESSES, WEIGHT OF THEIR TESTIMONY.—It is well settled that in cases of this nature, the testimony of the subscribing witnesses is of great weight and that the testimony of persons accidentally present at the time of the execution of the will, but who have nothing to do with the transaction, is not as weighty as that of the subscribing witnesses (Garcia *vs.* Garcia, 63 Phil., 419).

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Belmonte, *J.*

The facts are stated in the opinion of the court.

Castor Raval for petitioner and appellant.
Elias B. Asuncion for oppositors and appellees.

DIZON, *J.:*

This is an appeal taken by Federico Corpus from the judgment of the Court of First Instance of Ilocos Norte disallowing the last will and testament of the deceased notes de los Santos who died in the evening of April 19, 1950, in Lipay a Bassit, Nalasin, municipality of Solsona, Ilocos Norte, at the age of 80 years, without leaving any descendants nor ascendants.

On May 4, 1950, appellant filed the corresponding petition for the probate of the document now in the record as Exhibit "D" as the last will and testament of said deceased. On August 20 of the same year, Sotero and Eulalia de los Santos, her surviving sisters, filed their opposition to the petition for probate mainly upon the ground that, at the time of the execution of the alleged will, the testatrix was no longer of sound and disposing mind and the will was not executed in accordance with law.

After the service of the notice required by law in cases of this nature, the petition for probate was heard and both parties presented their respective evidence. Thereafter the trial court rendered the appealed judgment which appellant now urges us to reverse upon the ground that said court committed the following errors:

"The lower court erred:

I. "In finding that the deceased Matea de los Santos lacked testamentary capacity when Exhibit "D", her last will and testament, was executed.

II. "In finding that Exhibit "D" was not executed according to law.

III. "In declaring that the preponderance of evidence is in favor of the oppositors-appellees.

IV. "In not allowing the probate of the will."

The evidence for appellant consisting of the testimony of the three subscribing witnesses, Judge Rosalio Segundo,

Rev. Fr. Constante C. Dumlao and Ignacio Palacio, is, in substance, to the following effect:

In the morning of April 18, 1950, upon request of appellant, Rosalio Segundo, a member of the bar and Justice of the Peace of Solsona, Ignacio Palacio, sanitary inspector of said municipality and Fr. Contante Dumlao, parish priest of the Independent Church at Solsona, went to the house of the testatrix at Lipay a Bassit, Solsona, Ilocos Norte, where she was then seriously ill. Upon their arrival, the testatrix requested Judge Segundo to draft her last will and testament, giving all her properties to the spouses Filomena Ramos and Federico Corpuz. Thereupon Judge Segundo took note of what the testatrix wanted and then proceeded to write the last will and testament on a typewriter in the Ilocano dialect, known to and spoken by her. The will having been written, Judge Segundo, read it to the testatrix who thereafter told him that the same was acceptable to her. Then, upon her request, Judge Segundo assisted her in placing her thumbmark at the bottom of the will on its second page as well as on the left margin of the first and second pages, in the presence and in that of the other two subscribing witnesses, and thereafter the said three subscribing witnesses signed at the bottom of the attestation clause and on the left margin of each and everyone of the two pages thereof in the presence of the testatrix and that of each other, the first having been Fr. Dumlao, followed on the sanitary inspector Ignacio Palacio and by Judge Rosalio Segundo.

Upon the other hand, the substance of the testimony of the witnesses for appellees has been correctly stated in the appeal judgment by His Honor, the Trial Judge, as follows:

"Rizal Pascual, a witness for the opposition testified that on April 19, 1950, he went to visit Matea de los Santos who was then sick and stayed there until 12:00 o'clock noon of the same day. While he was there near the bed of the sick woman, Dolores Villaluz and other persons also came to visit Matea de los Santos. Then the Justice of the Peace, Rosalio Segundo, the sanitary inspector, Ignacio Palacio, and the priest, Fr. Constancio C. Dumlao, arrived and the Justice of the Peace went to the kitchen where Matea de los Santos was lying sick. The witness heard the Justice of the Peace remark: "The old woman is already prostrate." Matea de los Santos was then speechless and unable to move and her eyes were closed. The Justice of the Peace asked her to whom she was giving her properties but Matea de los Santos could not answer because she was not able to speak anymore. Then the Justice of the Peace went to the sala of the house to typewrite on a piece of paper and the sanitary inspector injected the sick woman. After the paper was typewritten the Justice of the Peace went to the kitchen where the sick woman was and he said to her, "sign this testament now," and he took hold of her hand and affixed her thumbmark on the paper. When the thumbmark of Matea de los Santos was affixed with the help of the Justice of the Peace the priest, Fr. Dumlao,

was in the sala of the house and the sanitary inspector, Ignacio Palacio, was downstairs. Then the Justice of the Peace returned to the sala of the house after the thumbmark of Matea de los Santos was affixed on the paper and he called the priest to sign. The sanitary inspector was downstairs when the priest signed and when the sanitary inspector was signing the paper the priest was talking with the people inside the house. After the sanitary inspector had signed the Justice of the Peace was the last to sign and he signed in the presence of Dolores Villaluz, Federico Corpuz and Rizal Pascual.

"The witness, Rizal Pascual, testified also that the testatrix died in the night of April 19, 1950, when the testament was executed. On cross examination, the witness declared that the Justice of the Peace, together with the priest and the sanitary inspector, went to the house of Matea de los Santos on April 19, 1950, at 9:00 o'clock in the morning, to draft the testament; that the testament was not read by anybody nor was it read to the testatrix; that Matea de los Santos was dying after the Justice of the Peace and his companions left the house and in the evening of the same day she expired.

"Dolores Villaluz, another witness for the opposition, corroborated the testimony of Rizal Pascual in all its details." (Record on Appeal, pp. 9–11).

Upon the evidence, as summarized above, the trial court held that: "The most important question in this case is whether the supposed testatrix has testamentary capacity at the time the supposed testament was executed. Upon this point, the court is of the opinion that she had not. The evidence for the opposition shows by a preponderance of evidence that the deceased Matea de los Santos, on April 19, 1950, was incapable of moving, of speaking, or in other words, she was in a comatose condition and incapable of performing any conscious and valid act."

The main question involved in the present appeal being merely one of credibility, we have carefully gone over the evidence of record and, after doing so, notwithstanding the settled rule that the findings of fact of the trial court must be given great weight and should not be unnecessarily disturbed, we feel constrained and bound to reverse them in the present case because said court, in the appreciation of the evidence, had arbitrarily disregarded the whole testimony of the witnesses for appellant while it gave undeserved credit to that of the witnesses for appellees.

As one peruses the appealed judgment he cannot fail to note the fact that His Honor, the Trial Judge, was completely unable to point to any fact or circumstance directly or indirectly showing that the subscribing witnesses, whose testimony fully supports the regular execution of the last will and testament in question, deserves no credit at all, while he likewise disregarded important facts showing bias and inconsistency in the testimony of the witnesses for appellees.

It cannot be denied that the three subscribing witnesses are intelligent professional men, one of them—who also

drafted the will—being a member of the bar and Justice of the Peace of the municipality of Solsona, Ilocos Norte. The record does not show even remotely that they had any interest or motive in the premises powerful enough to induce them to commit perjury. All of them admitted that the testatrix, at the time of the execution of the will, was seriously ill but with the same firmness they affirmed that she could be talked to and could talk intelligently at that time; that she told Judge Segundo that she wanted to make her will leaving her properties to the spouses Federico Corpuz and Felipe Ramos; that upon her direction Corpuz gave the Judge the tax declarations of her property; that after the preparation of the will, the same was read to her and she expressed her conformity with its provisions and thereafter requested the Judge to assist her in placing her thumbmark on the two pages thereof, which was done in the presence of the subscribing witnesses, who also signed thereafter in her presence and in that of each other.

Upon the other hand, His Honor, the Trial Judge, chose to believe in its entirety the testimony of the witnesses for appellees in the persons of Rizal Pascual and Dolores Villaluz, notwithstanding serious flaws therein, in spite of circumstances showing bias on their part and the inherent improbability of their testimony.

For instance, Rizal Pascual's claim that notwithstanding the fact that his house was quite far away from that of the testatrix, he went to visit her on April 19, 1950 and stayed there from 8:00 to 12:00 that morning is quite hard to accept. His claim that during that morning he practically shadowed Judge Segundo and the other two subscribing witnesses all around the house to find out what was the document drafted by the Judge, apparently without any remonstrance on the part of said witnesses, makes it harder still for his testimony to be believed. Why this man, who was not a near blood-relative of the testatrix, should show persistent concern for and interest in what was happening in her house and why he should stay there from 8:00 to 12:00 in the morning has not been satisfactorily explained. Upon the other hand, at one point he testified that the testatrix died on April 19, but in another part of his testimony he clearly gave the impression that the death occurred on April 20; at one point also of his testimony, he stated that the will was not read to the testatrix, but in another part he admitted that the document was read to her. Such unusual contradictions have not been sufficiently explained.

As regards the testimony and credibility of Dolores Villaluz, similar considerations could be made. In the first place she is the daughter of one of the oppositors-appellees. It can be said, therefore, that she has, to a certain

extent, a direct interest in the outcome of this proceeding. In the second place, while at the beginning of her testimony she clearly gave the impression that she had not left her house on April 19, 1950, she later rectified that statement after several clarifying questions had been propounded to her.

It is well settled that in cases of this nature, the testimony of the subscribing witnesses is of great weight and that the testimony of persons accidentally present at the time of the execution of the will, but who have nothing to do with the transaction, is not entitled to equal weight with that of the subscribing witnesses (Garcia *vs.* Garcia, 63 Phil., 419). In the present case, due to the circumstances mentioned heretofore, we do not have even the slightest doubt that the testimony of the subscribing witnesses is manifestly more rational, inherently more probable and deserving of more trust than that of the witnesses for the oppositors.

Upon the other hand, why the testatrix should desire to leave all her estate to the Corpuz spouses is perfectly understandable. In the first place, the record discloses that before her death she had a litigation in court against her two sisters—appellees herein. In the second place, the testimony of Dolores Villaluz itself shows that the said spouses were the protegees of the testatrix with whom they had lived for more than twenty years and that Federico Corpuz was a near blood-relation of said testatrix. It is not strange, therefore, for her to leave everything to said spouses.

As regards the date of the execution of the will under consideration, we are inclined to believe that, as testified to by the subscribing witnesses, the same took place on April 18, 1950 and not on the 19th day of same month. But even granting that upon this point the witnesses for appellees told the truth, the same is not sufficient to show their other claim that in the morning of that date the testatrix was no longer of sound and disposing mind.

In the second to the last paragraph of the appealed judgment it is stated that "it is also doubtful that the supposed testament was executed according to law, that is, that the testatrix was made to affix her thumbmark in the the presence of all the witnesses and that the witnesses signed in the presence of the testatrix and in the presence of all and each of the witnesses." His Honor, however, states no reason at all to support his "doubt".

In view of all the foregoing, we, therefore, hold and so decide that the document now in the record as Exhibit "D" is the last will and testament of the deceased Matea de los Santos and that the same was executed with all

the formalities required by law in force at the time of its execution.

Wherefore, the appealed judgment is hereby reversed and another shall be entered admitting the document Exhibit "D" to probate as the last will and testament of the deceased Matea de los Santos. With costs.

It is so ordered.

De Leon and *Martinez, JJ.*, concur.

Judgment reversed; another entered admitting document Exhibit D to probate as last will and testament of deceased Matea de los Santos.

[G. R. No. 8872–R. March 26, 1954]

EUSTAQUIO RAMIENTOS, plaintiff and appellee, *vs.* FLORENCIO (NONOY) ALVARICO, ESTRELLA ALVARICO and GENOVEVA ALVARICO, defendants and appellants.

EVIDENCE; PRESUMPTION; DUTY OF NOTARY PUBLIC; PERFORMANCE OF OFFICIAL DUTY IS PRESUMED.—It is part of the duties of a notarial officer to acquaint the parties with the nature and consequences of their written acts acknowledged before him, if it appears to him that the latter are not aware thereof. This is the ordinary course of official duty which, it is presumed, is always followed. The presumption cannot be overthrown by the unsupported word of a lone witness, particularly where, as in the case at bar, said lone witness is one of the parties affected by the disposition made in the public instrument.

APPEAL from a judgment of the Court of First Instance of Lanao. Nolasco, *J.*

The facts are stated in the opinion of the court.

Generoso D. Avendanio for defendants and appellants.

Geronimo R. Marave for plaintiffs and appellees.

DE LEON, *J.*:

Plaintiff-appellee Eustaquio Ramientos seeks to compel the defendants-appellants, children of the late Lorenzo Alvarico, to recognize his possession and ownership over one-half of that parcel of land covered by original certificate of title No. 22 (Patent No. 7114), issued in the name of Lorenzo Alvarico, located in barrio Maigao, municipality of Kolambugan, Province of Lanao, which portion of land is "bounded on the North, by Iligan Bay or the seashore, on the east, by the heirs of Lorenzo Alvarico, or the remaining portion of the land, on the south by Santos Patria, and on the west, by the heirs of Lorenzo Alvarico, containing an area of about 7 hectares and assessed at ₱3,680"

The entire land is a homestead applied for by the late Lorenzo Alvarico. According to the appellee, he and the late Lorenzo Alvarico mutually agreed to till and cultivate

this land, but only the late Lorenzo Alvarico shall apply for the same. The appellee also claimed that as soon as a title over the homestead shall be obtained, the late Lorenzo Alvarico shall execute a document recognizing him as the owner of one-half of the said homestead. Pursuant to their agreement, the late Lorenzo Alvarico executed the deed of donation (Exhibit E) on May 21, 1932, the English translation of paragraph 1 of which reads as follows:

"I, Lorenzo Alvarico, widower, of legal age, resident of barrio Barogohan, Kolambugan, Lanao, P. I., in true do hereby declare that because of the good services rendered by Eustaquio Ramientos, a widower, of legal age, resident of barrio Barogohan, Kolambugan, Lanao, so with the members of his family in attending, taking care, clearing, cultivating and working my land situated in Barogohan, for a long period of time now, do hereby by these presents voluntarily and peacefully grant, give and donate, outrightly and transfer the ownership unto said Eustaquio Remientos, his heirs, successors and assigns the portion of my land together with all the improvements thereof, towards the west, which is the one half of my land under Homestead No. 30038 (E–17899) and now having a homestead patent No. 7114 situated at barrio Maigao, Kolambugan, Lanao, and said patent was received by me on February 25, 1925."

The donation was accepted by the plaintiff on the same date and in the same instrument of donation. On May 26, 1947, after the death of Lorenzo Alvarico, defendants herein executed the deed of acknowledgment (Exhibit D), whereby they acknowledge the donation made by their father in favor of Eustaquio Remientos (Exhibit E).

Inocencio Alvarico, one of the appellants, denies the existence of the relationship of co-owners between his deceased father and appellee Ramientos. He claims that the appellee is only their tenant, that is why he (Ramientos) is in possession of the western portion of the homestead. He impugns the due execution of the deed of donation (Exhibit E) and the deed of acknowledgment (Exhibit D), alleging that the signature appearing on Exhibit E is not the genuine signature of his father, while the deed of acknowledgment (Exhibit D) was signed by him and his co-defendants because they honestly believed that it was merely a contract of lease constituting plaintiff Ramientos as their tenant over the disputed portion of the homestead.

Judgment was rendered by the Lanao Court of First Instance in favor of the plaintiff, the dispositive portion of which reads as follows:

"In view of the foregoing considerations, judgment is hereby rendered declaring the plaintiff as the absolute owner and possessor of the land in litigation which constitute one-half on the western side of the whole parcel of land covered by Certificate of Title No. 22, Patent No. 7114, and ordering the defendants to vacate said parcel of land immediately and to restitute possession thereof to the plaintiff. The defendants are hereby further ordered to surrender the Original Certificate of Title No. 22, Homestead Patent No. 7114, in the name

of Lorenzo Alvarico, to the Register of Deeds of Lanao for reconstitution and to pay the plaintiff the sum of ₱800 as damages.

"With costs against the defendants."

As correctly pointed out in the memorandum of the appellants, the main and ultimate issue determinative of the rights of the parties is whether or not there was an oral trust agreement between Ramientos and Lorenzo Alvarico to the effect that they are co-owners to the extent of one-half each of the homestead with an area of about 16 hectares.

We have carefully examined the evidence of record, and we have arrived at the conclusion that the lower court did not err in adjudicating the western one-half portion of the homestead in favor of the appellee. The trust agreement between the late Lorenzo Alvarico and appellee Ramientos was established by clear and convincing evidence. Agreeably with the court below, we find no valid reason why the public documents (Exhibits D and E) be declared null and void, for the reasons alleged by the defendants. Both of them were executed with all the solemnities of the law. Anastacio Jimenez, one of the instrumental witnesses to the execution of the deed of acknowledgment (Exhibit D), positively testified that said deed of acknowledgment was regularly executed by the defendants on May 26, 1947, and the same ratified before Atty. G. A. Villania, in the presence of the plaintiff and defendants. It is part of the duties of a notarial officer to acquaint the parties with the nature and consequences of their written acts acknowledged before him, if it appears to him that the latter are not aware thereof. This is the ordinary course of official duty which, it is presumed, is always followed. The presumption can not be overthrown by the unsupported word of a lone witness particularly where, as in this case, said lone witness is one of the parties affected by the disposition made in the public instrument.

There are other competent evidence of record which would sufficiently prove that the late Lorenzo Alvarico, during his lifetime, had always recognized the possession and ownership of Eustaquio Ramientos over the western one-half portion of the homestead. The western portion of the homestead contains fruit-bearing coconut trees planted by the plaintiff about 30 years ago. There is a common boundary between the lot claimed by the plaintiff and that admitted by him as appertaining to the heirs of the late Lorenzo Alvarico, consisting of a barbed wire fence, *bancal* and betel nut trees. Zacarias N. Orbe, then Municipal Treasurer of Kolambugan, Lanao, and sub-agent of the Philippine National Bank, testified that sometime between the years 1936 and 1940 Lorenzo Alvarico applied for a

loan with the Philippine National Bank, offering as security therefor the land covered by original certificate of title No. 22; that by reason thereof, he went to see the land described in said original certificate of title No. 22; that the late Lorenzo Alvarico admitted to him that one-half of the said land belonged to the appellee; that Alvarico indicated to him the boundary between the land of the plaintiff and that owned by Lorenzo Alvarico; and, that the loan application of Alvarico could not then be approved until a subdivision could be made of the property, segregating the lot appertaining to the plaintiff-appellee. After the execution of the deed of donation in 1932, Ramientos declared the lot in litigation in his own name (Exhibits A, F–1 to F–2) and paid the corresponding taxes thereon (Exhibits G to G–3). According to tax declaration No. 1573 (Exhibit A), for the year 1936, certificate of title No. 22 and patent No. 7114, for the same land, are mentioned therein and said tax declaration covers parts of the land declared under another tax declaration. In tax declaration No. 3111 (Exhibit F), for the year 1941, certificate of title No. 22 and patent No. 7114 are also mentioned therein, and said tax declaration supersedes tax declaration No. 1573. Lorenzo Alvarico died in 1945, and there is nothing in the evidence of record which would show that, during the years 1936 to 1945, he had complained about the declaration by Eustaquio Ramientos of the land in question in his own name for assessment purposes. On November 23, 1950, after the execution of the deed of acknowledgment (Exhibit D), by the herein appellants, Appellant Inocencio Alvarico declared the eastern portion of the homestead, with an area of more than 7 hectares, in the name of the heirs of Lorenzo Alvarico (Exhibit B, certified copy of tax declaration No. 6090). This tax declaration is competent proof to show that the deed of acknowledgment (Exhibit D) was regularly executed by the defendants, and that they recognize that appellee Ramientos is the owner of the western one-half portion of the land covered by certificate of title No. 22.

In view of all the foregoing circumstances, it is clear that appellee Eustaquio Ramientos is entitled to the possession and ownership of the disputed lot. As was stated by our Supreme Court in Sahagun *vs.* Gauiran, G. R. No. L–4645, May 29, 1953:

"This case may be likened to one where a co-owner has been deprived of his right, interest, share and participation in a parcel of land which was registered in the name of his-co-owner and the period for reopening the decree, pursuant to section 38, Act No. 496, already has expired. The registration of the parcel of land in the name of one of the co-owners does not preclude the court, in the exercise of its equity jurisdiction, from compelling the registered

co-owner to reconvey the right, interest, share and participation in the registered parcel of land to the one who has unlawfully been deprived thereof."

With this view that we take of the case, we find that the question raised in the third assignment of error can not, of course, be sustained. The appellants admitted that they gathered about 8,000 nuts from the land belonging to the appellee from March to April, 1951, and obtained from the sale thereof the sum of ₱800, so that the lower court was correct in ordering the former to pay to the latter the said sum of ₱800.

Wherefore, finding the decision appealed from to be in accord with the evidence and the law, the same is hereby affirmed in all its parts, with costs against the appellants. So ordered.

Reyes, Pres., J. and *Dizon, J.*, concur.

Judgment affirmed with costs against appellants.

[No. 8174–R. March 24, 1954]

RUFINA FRANCO ET AL., plaintiffs and appellants, *vs.* MARIANO TUTAAN, defendant and appellee

1. DONATION; REVOCATION.—When a donation made in a public instrument is accepted in writing by the donees and subsequently registered in the corresponding office of the Register of Deeds, its validity must be upheld and the same could be revoked only upon positive proof of non-compliance with its terms and conditions. The claim that the donees failed to do so is a matter of defense which must be established by competent evidence.
2. ID.; DENIAL OF DONOR'S OWNERSHIP; ESTOPPEL.—A co-donee who had accepted the donation in due form is in estoppel to deny the donor's ownership.

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Belmonte, *J.*

The facts are stated in the opinion of the court.

Bartolome Guirao for plaintiffs and appellants.
Ulpiano R. Arzadon for defendant and appellee.

DIZON, *J.:*

This is an appeal from the judgment of the Court of First Instance of Ilocos Norte of the following tenor:

"For the foregoing considerations, the court renders judgment declaring that the plaintiffs Celedonia Libed and Bernardo Libed are entitled to partition with the defendant, Mariano Tutaan, of the parcels "B" and "D" under the first cause of action and of the parcels "LL", "Q", and "R" under the second cause of action, adjudicating to the said plaintiffs one-sixth each thereof and four-sixth to the defendant. The defendant is absolved from the complaint

with respect to the parcels which are in the possession of third persons through purchase with *pacto de retro.*

"No damages are awarded for lack of evidence. Without cost." (Record on Appeal, p. 31).

The present action is for partition. In the first cause of action the complaint alleged that the six parcels of land described therein belonged to Sofio Cabot who died on March 23, 1939; that on July 4, 1935 he executed the deed of donation now in the record as exhibit "A" in favor of Celestino Aquilizan, who died on September 24, 1944 survived by his widow Rufina Franco, Gabina Libed, who also died on March 3, 1945 survived by her heirs Celedonia and Luis Libed, the latter also having died survived by his son Bernardo, and Mariano Tutaan, Francisca Calub and Celedonia Libed; that after the death of the donor, the donees entered into the possession of said parcels of land but that in 1944 Mariano Tutaan refused to give his co-donees their share in the products thereof consisting of palay, corn and basi (local rice wine). In the second cause of action the complaint merely alleged that the deceased spouses Sofio Cabot and Prudencia Libed were the owners of the 23 parcels of land described therein and that said spouses left no descendants nor ascendants, the plaintiffs being their only relatives.

In his answer the defendant, after making a denial of the material averments of the complaint, interposed, as against the first cause of action, the special defense that the lands subject-matter thereof belonged *pro indiviso* to him and to plaintiffs Celedonia Libed and Bernardo Libed in the proportion of four-sixth for him and one-sixth each for the other two, having inherited the same from the spouses Estanislao Tutaan and Gabina Libed; that the deed of donation relied upon by the plaintiffs was void, firstly, because the donor was not the owner of the properties donated and secondly, because the donees did not comply with the conditions set forth therein. With respect to the second cause of action the defendant made the similar allegation that the 23 parcels of land subject-matter thereof belonged to the spouses Estanislao Tutaan and Gabina Libed and, upon their death, were inherited by Mariano Tutaan, Celedonia Libed and Bernardo Libed.

The first and second assignment of errors made in appellants' brief refer to the validity of the deed of donation exhibit "A" which the trial court declared of no legal force upon the ground that the donees "failed to prove at the hearing that they had complied with the said conditions, and in the absence of evidence thereof, they are not entitled to own and possess the land donated to them." (Record on Appeal, p. 27).

It is true that the deed of donation under consideration imposed upon the donees the obligation to support the donor—during his lifetime—with the products of the properties donated and to defray proportionately the necessary expenses of his last sickness and funeral, the condition being that should they fail to comply therewith the donation should be considered as revoked, but we are of the opinion that, in the absence of affirmative proof to the contrary, it must be presumed that the donees had complied with their obligation under the deed of donation. The donation having been made in a public instrument, the same having been accepted in writing by the donees and subsequently registered in the office of the Register of Deeds of Ilocos Norte, its validity must be upheld and the same could be revoked only upon positive proof of non-compliance with its terms and conditions. The claim that the donees failed to do so is a matter of defense which appellee was in duty bound to establish by competent evidence. After going over the entire record we find that he has not succeeded in doing so.

As regards the question of whether Sofio Cabot, the donor, was the owner of the properties subject-matter of the donation, we are of the opinion that appellee Mariano Tutaan is in estoppel to deny the donor's ownership, it appearing that he was one of the donees himself who had accepted the donation in due form.

In relation to the properties subject-matter of the second cause of action, we are inclined to agree with the trial court that appellants have failed to prove the ownership of the spouses Sofio Cabot and Prudencia Libed over the same. The preponderance of the evidence in this connection is to the effect that, with the exception of the parcels described under paragraphs "LL", "Q" and "R", which are and have been for many years in the possession of appellee, all the others are at present in the possession of third persons who have an adverse claim thereto.

In view of all the foregoing, we are therefore of the opinion and so hold that the properties subject-matter of the deed of donation exhibit "A" belong in common and *pro indiviso* to the donees therein named and that the same should be partitioned amongst them in the manner and proportion provided in said deed of donation, this to be understood as without prejudice to whatever rights may pertain to the third persons who, according to appellee, are at present in possession of the parcels described in paragraphs "A", "C", "E" and "F" of the first cause of action. As regards the properties subject-matter of the second cause of action, we are of the opinion and so hold that the action for partition should be, as it is hereby,

dismissed in so far as the appellants are concerned, with the exception of Celedonia Libed and Bernardo Libed, who are hereby, pursuant to the admission made by appellee, declared to be the owners of the parcels described under paragraphs "LL", "Q" and "R", together with said appellee in the proportion of four-sixth for the latter and one-sixth for each of the former.

With respect to the claim for damages, we find the trial court's contention of lack of evidence to be well-founded.

Wherefore, modified as above indicated, the appealed judgment is affirmed in all other respects, without costs.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Judgment modified.